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REPORT
102-196

WASTE ISOLATION PILOT PLANT LAND WITHDRAWAL ACT OF 1991

OCTOBER 28, 1991.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1671]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1671) to withdraw certain public lands and to otherwise provide for the operation of the Waste Isolation Pilot Plant in Eddy County, New Mexico, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Waste Isolation Pilot Plant Land Withdrawal Act of 1991".

SEC. 2. DEFINITIONS.

As used in this Act:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the United States Environmental Protection Agency.

(2) AGREEMENT.—The term "Agreement" means the Agreement for Consultation and Cooperation Between the State of New Mexico and the United States Department of Energy entered into on July 1, 1981, as amended, authorized by section 213(b) of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (93 Stat. 1265).

(3) ATOMIC ENERGY DEFENSE ACTIVITY.—The term "atomic energy defense activity" has the same meaning as is provided in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(4) CONTACT-HANDLED TRANSURANIC WASTE.—The term "contact-handled transuranic waste" means waste from atomic energy defense activities with a specific activity greater than 100 nanocuries per gram of waste and a surface dose rate of less than 200 millirems per hour.

S313-31

(5) DISPOSAL REGULATIONS.—The term "disposal regulations" means the regulations issued by the Environmental Protection Agency establishing the generally applicable environmental standards for the disposal of spent nuclear fuel, high-level radioactive waste, and transuranic waste and contained in subpart B of part 191 of title 40, Code of Federal Regulations.

(6) EEG.—The term "EEG" means the Environmental Evaluation Group for the WIPP referred to in section 1433 of the National Defense Authorization Act, Fiscal Year 1989 (102 Stat. 2073).

(7) GOVERNOR.—The term "Governor" means the Governor of the State of New Mexico.

(8) HIGH-LEVEL RADIOACTIVE WASTE.—The term "high-level radioactive waste" has the same meaning as is provided in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(9) MANAGEMENT AND STORAGE REGULATIONS.—The term "management and storage regulations" means the regulations issued by the Environmental Protection Agency establishing the generally applicable environmental standards for the management and storage of spent nuclear fuel, high-level radioactive waste, and transuranic waste and contained in subpart A of part 191 of title 40, Code of Federal Regulations.

(10) NO-MIGRATION DETERMINATION.—The term "No-Migration Determination" means the Final Conditional No-Migration Determination for the Department of Energy Waste Isolation Pilot Plant published by the Environmental Protection Agency on November 14, 1990 (55 FR 47700).

(11) PERFORMANCE ASSESSMENT REPORT.—The term "performance assessment report" means the documented analysis of the long-term performance of the WIPP that is published annually by the Department of Energy.

(12) REMOTE-HANDLED TRANSURANIC WASTE.—The term "remote-handled transuranic waste" means transuranic waste from atomic energy defense activities with a surface dose rate between 200 millirems per hour and 1,000 rems per hour.

(13) SECRETARY.—The term "Secretary" means the Secretary of Energy.

(14) SPENT NUCLEAR FUEL.—The term "spent nuclear fuel" has the same meaning as is provided in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(15) THE STATE.—The term "the State" means the State of New Mexico.

(16) TRANSURANIC WASTE.—The term "transuranic waste" has the same meaning as is provided for "transuranic radioactive waste" in part 191 of title 40, Code of Federal Regulations. The term includes such waste that is also mixed with waste regulated as hazardous waste under the Solid Waste Disposal Act.

(17) WIPP.—The term "WIPP" means the Waste Isolation Pilot Plant authorized under section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (93 Stat. 1265).

(18) WIPP SITE.—The term "WIPP site" means the lands and resources withdrawn and reserved by this Act and described in section 3(c).

SEC. 3. LAND WITHDRAWAL AND RESERVATION FOR THE WIPP

(a) WITHDRAWAL, JURISDICTION, AND RESERVATION.—

(1) WITHDRAWAL.—Subject to valid existing rights and except as otherwise provided in this Act, the WIPP site described pursuant to subsection (c) is withdrawn from entry, sale, or other disposition under the public land laws, from all forms of appropriation under the mining laws, and from operation of the mineral leasing laws and the geothermal leasing laws.

(2) JURISDICTION.—Except as otherwise provided in section 6(d), jurisdiction over the WIPP site is transferred from the Secretary of the Interior to the Secretary of Energy.

(3) RESERVATION.—

(A) IN GENERAL.—The WIPP site is reserved for the use of the Secretary of Energy for the construction, experimentation, operation, repair and maintenance, disposal, shutdown, monitoring, decommissioning, and other authorized activities associated with the purpose of the WIPP as set forth in section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (93 Stat. 1265), and this Act.

(B) WATER RIGHTS.—Nothing in this Act shall be construed to establish a reservation to the United States with respect to any water or water right on the WIPP site. Nothing in this Act shall be construed as authorizing the appropriation of water on the WIPP site by the United States after the date

of enactment of this Act, except in accordance with the law of the State. This subparagraph shall not be construed to affect water rights acquired by the United States before the date of enactment of this Act.

(b) REVOCATION OF PUBLIC LAND ORDERS.—Public Land Order 6403, of June 29, 1983, Public Land Order 6826, of January 28, 1991, and the memorandum of understanding referenced in each of the orders are hereby revoked.

(c) LAND DESCRIPTION.—

(1) IN GENERAL.—The boundaries depicted on the map issued by the Bureau of Land Management of the Department of the Interior, entitled "WIPP Withdrawal Site Map", and dated October 9, 1990, are established as the boundaries of the WIPP site.

(2) LEGAL DESCRIPTION AND MAP.—Not later than thirty days after the date of enactment of this Act, the Secretary of the Interior shall—

(A) publish in the Federal Register a notice containing a legal description of the WIPP site; and

(B) file copies of the legal description of the WIPP site, and the map described in paragraph (1), with

(i) the Committee on Energy and Natural Resources of the United States Senate;

(ii) the Committee on Interior and Insular Affairs of the United States House of Representatives;

(iii) the Secretary; and

(iv) the State.

(d) TECHNICAL CORRECTIONS.—The legal description and map shall have the same force and effect as if they were included in this Act, except that the Secretary of the Interior may correct clerical and typographical errors.

SEC. 4. ESTABLISHMENT OF MANAGEMENT RESPONSIBILITIES.

(a) GENERAL AUTHORITY.—The Secretary shall—

(1) have responsibility for the management of the WIPP site;

(2) consult and cooperate with the State under the terms of the Agreement in discharging the responsibilities required by this Act; and

(3) consult and cooperate with the EEG under the terms of Contract No. DE-AC04-89AL58309 in the performance of its responsibility to conduct an independent technical review and evaluation of the WIPP pursuant to section 1433 of the National Defense Authorization Act, Fiscal Year 1989 (102 Stat. 2073).

(b) MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than one year after the date of enactment of this Act, the Secretary, in consultation with the State and the Department of the Interior, shall develop a management plan for the WIPP site.

(2) ACTIVITIES NOT ASSOCIATED WITH THE WIPP.—

(A) IN GENERAL.—Any use of the lands for activities not associated with the WIPP shall be subject to such conditions and restrictions as are necessary to permit the use of the lands for WIPP activities, as determined by the Secretary, and subject to the purposes of the WIPP as set forth in section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (93 Stat. 1265), and this Act.

(B) SPECIFIC ACTIVITIES.—In addition to other activities, the management plan shall provide for domestic livestock grazing, hunting and trapping, wildlife habitat, the disposal of salt tailings remaining on the surface, and mining, as follows:

(i) GRAZING.—Subject to such regulations, policies, and practices as the Secretary determines are necessary or appropriate, the Secretary shall permit grazing to continue where established prior to the date of enactment of this Act. The grazing shall be conducted consistent with—

(I) title IV of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1751 et seq.);

(II) the Act entitled "An Act to stop injury to the public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize the livestock industry dependent upon the public range, and for other purposes", approved June 28, 1934 (43 U.S.C. 315 et seq.) (commonly known as the "Taylor Grazing Act");

(III) Public Rangelands Improvement Act of 1978 (43 U.S.C. 1902 et seq.); and

(IV) Executive Order 12548 (51 Federal Register 5985).

(ii) HUNTING AND TRAPPING.—

(I) IN GENERAL.—The Secretary shall permit hunting and trapping within the WIPP site in accordance with applicable laws and regulations of the United States and the State.

(II) RESTRICTIONS.—The Secretary after consultation with the New Mexico Department of Game and Fish, may issue regulations designating zones where, and establishing periods when, no hunting or trapping is permitted for reasons of administration or public safety.

(iii) WILDLIFE HABITAT.—The Secretary shall manage the WIPP site in a manner to maintain and preserve the wildlife habitat of the WIPP site.

(iv) SALT TAILINGS.—The Secretary shall dispose of salt tailings that are not needed for backfill at the WIPP site. Disposition shall be made in accordance with sections 2 and 3 of the Act entitled "An Act to provide for the disposal of materials on the public lands of the United States", approved July 31, 1947 (30 U.S.C. 602 and 603) (commonly known as the "Materials Act of 1947").

(v) MINING.—

(I) IN GENERAL.—Except as otherwise provided in subclause (II), no surface or subsurface mining unrelated to the WIPP, including slant drilling under the site from within or without the site, shall be permitted on or under the WIPP site, including after decommissioning.

(II) EXISTING OIL AND GAS LEASES.—The Secretary of the Interior, in consultation with the Secretary, shall undertake a study to determine the effects, if any, of Federal Oil and Gas Leases No. NMNM 02953 and 02953C on activities to be conducted at the WIPP site. The study shall include recommendations as to the advisability of negotiating an exchange of the leases for other Federal oil and gas leases outside the WIPP site or canceling the leases. The Secretary of the Interior shall submit his recommendations to the Secretary and the State prior to the conclusion of the experimental program provided for in section 5 of this Act. Any activities undertaken on the leases shall be subject to such reasonable restrictions as the State, the Secretary of the Interior, and the Secretary may prescribe taking into consideration the purposes for which the land is withdrawn under this Act.

(c) SUBMISSION OF PLAN TO CONGRESS AND THE STATE.—The Secretary shall submit the management plan developed pursuant to subsection (b) to the Committee on Energy and Natural Resources of the United States Senate, the Committee on Interior and Insular Affairs of the United States House of Representatives, and the State. Any amendments to such plan shall be submitted promptly to such Committees and the State.

(d) CLOSURE TO THE PUBLIC.—If the Secretary determines that the health and safety of the public or the common defense and security require the closure to public use of a road, trail, or other portion of the WIPP site, the Secretary may take such action as the Secretary considers necessary or desirable to effect and maintain the closure.

(e) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements—

(1) with the Secretary of the Interior and the State for the administration of grazing within the WIPP site;

(2) with the State for the maintenance of the wildlife habitat of the WIPP site; and

(3) with the Department of the Interior or the State, or both, to enforce the prohibition on mining within the WIPP site.

SEC. 5. EXPERIMENTAL PROGRAM.

(a) AUTHORIZATION.—The Secretary may implement an experimental program at the WIPP as described in subsection (b), subject to the review and evaluation process under subsection (c) and completion of conflict resolution, if any, under subsection (d); or subject to the requirements of subsection (f). No transuranic waste shall be received at the WIPP, after the date of enactment of this Act, until the Secretary has fulfilled the requirements of this section.

(b) EXPERIMENTAL PROGRAM PROPOSAL.—

(1) IN GENERAL.—Except as provided in subsection (f), not later than ninety days after the date of enactment of this Act, the Secretary (in consultation with the State, the Administrator, the National Academy of Sciences, and the EEG) shall prepare a proposal for an experimental program involving transuranic waste at the WIPP. The Secretary shall give notice in the Federal Register of the availability of the experimental program proposal and shall provide an opportunity for public access to these documents.

(2) MODIFICATIONS.—The Secretary shall also prepare a proposal for any modification to the experimental program that involves any material change in the nature of the experiments involving transuranic waste at the WIPP or any change in the total amount of waste to be employed in experiments at the WIPP. Such amounts shall in no event exceed the amounts set forth in section 7 of this Act.

(3) EXPERIMENTS.—The proposal or any proposed modification shall include detailed information on the following experiments—

(A) experiments to determine the rate of gas generation and waste solubility at the WIPP and to evaluate the impact of gas generation and waste solubility on the WIPP;

(B) experiments to aid in the assessment of compliance with the disposal regulations; and

(C) such other experiments as are determined by the Secretary, after consultation with the State, the Administrator, the National Academy of Sciences, and the EEG, to be necessary to ensure the protection of the public health and safety and the environment.

(4) WRITTEN PLANS TO BE INCLUDED IN PROPOSAL.—The experimental program proposal, or any proposed modification to the experimental program, shall also include detailed information describing the proposed purposes of the experiments, how the data from the experiments will be used, the amount of transuranic waste required for the experiments, and the time schedule for the experiments.

(5) ADDITIONAL INFORMATION TO BE INCLUDED IN THE PROPOSAL.—The proposal, or any proposed modification, shall also include the following—

(A) a determination by the Secretary that there are preestablished plans and procedures for the retrieval of the transuranic waste as required by section 8 of this Act;

(B) a summary of the preliminary performance assessment calculations available to guide the experiments;

(C) a determination by the Secretary that the proposed experiments pose no undue risk to the public health and safety or to the environment; and

(D) a determination by the Secretary that the proposed experiments will provide relevant and useful data in a timely manner for making the Secretary's determination of compliance with the disposal regulations, or for confirming such compliance, and for the Administrator's certification of compliance.

(6) SUBMISSION OF PROPOSAL.—The Secretary shall submit the experimental program proposal, or any proposed modification, and supporting documentation, to the State, the Administrator, the National Academy of Sciences, and the EEG.

(c) REVIEW OF PROPOSAL OR PROPOSED MODIFICATION.—

(1) REVIEW AND COMMENT.—Not later than thirty days after the submission of the proposal, or any proposed modification, the State, the Administrator, the National Academy of Sciences, and the EEG shall review the proposal, or proposed modification, and supporting documentation, and provide their comments to the Secretary. The comments shall include an evaluation of whether the proposed experiments will provide relevant and useful data in a timely manner for determining compliance with the disposal regulations, or for confirming such compliance.

(2) RESPONSES BY THE SECRETARY.—Not later than thirty days after the receipt of comments under paragraph (1), the Secretary shall—

(A) prepare written responses to the comments received;

(B) submit the responses to the State, the Administrator, the National Academy of Sciences, and the EEG; and

(C) publish a final experimental program plan in the Federal Register.

(3) FINAL EVALUATION.—Within thirty days after the Secretary completes the requirements of paragraph (2), the State, the Administrator, the National Academy of Sciences, and the EEG shall—

(A) complete a final evaluation of the proposed experimental program;

(B) set forth the factual basis upon which the evaluation is made; and

(C) provide the evaluation to the Secretary, who shall give notice of receipt in the Federal Register and provide an opportunity for public access to these documents.

(d) CONFLICT RESOLUTION.—If the State disagrees with the Secretary's final experimental program plan published under subsection (c)(2), the State may invoke the conflict resolution provisions of the Agreement.

(e) MODIFICATIONS TO THE EXPERIMENTAL PLAN AFFECTING THE LIMITATION ON VOLUME.—

(1) APPROVAL BY THE ADMINISTRATOR.—In addition to the requirements of subsections (b) and (c) of this section, if a proposed modification to the experimental program plan calls for the amount of transuranic waste emplaced at the WIPP to exceed 0.5 percent by volume, the Administrator must concur with the proposed modification and approve the increase in the volume of transuranic waste, consistent with the Administrator's review and evaluation under subsection (c) and consistent with section 7(a)(2)(C), prior to receipt at the WIPP of any amount of waste exceeding 0.5 percent by volume.

(2) CONFLICT RESOLUTION.—If the State disagrees with the increase in the volume of transuranic waste, the State may invoke the conflict resolution provisions of the Agreement.

(f) PROCESS FOR PRIOR REVIEW OF EXPERIMENTAL PROGRAM.—

(1) PRIOR REVIEW.—If the Secretary has provided an opportunity for review of, comment on, and evaluation of the elements of the experimental program proposal required in this section prior to the enactment of this Act, the provisions of this subsection shall apply.

(2) SUBMISSION OF DOCUMENTATION TO CONGRESS.—The Secretary may submit documentation of the review, comment, and evaluation process within forty five days of the enactment of this Act, as well as the comments and evaluations provided by the State, the Administrator, the National Academy of Sciences, and the EEG, to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives. These submissions shall constitute compliance with the requirements of subsections (b) and (c) of this section. If the Secretary has requested and not received final evaluations from the State, the Administrator, the National Academy of Sciences, and the EEG within thirty days of the enactment of this Act, the Secretary's submission of documentation of the review, comment, and evaluation process shall constitute compliance with the requirements of subsections (b) and (c) of this section.

(g) ACCESS TO INFORMATION.—The Secretary shall provide the State and the EEG such data and other information relevant to health, safety or environmental issues pertaining to the WIPP in a timely manner to enable the State and the EEG to discharge their responsibilities.

(h) ANALYSES OF PERFORMANCE ASSESSMENT REPORT.—

(1) IN GENERAL.—Within one hundred and twenty days of the annual publication of the Secretary's performance assessment report, the State, the Administrator, and the EEG shall evaluate and publish analyses of that report.

(2) RESPONSES BY SECRETARY.—Within one hundred and twenty days of the publication of analyses pursuant to paragraph (1), the Secretary shall submit written responses to the State, the Administrator, and the EEG, and to other appropriate entities or persons after consultation with the State.

(i) OPERATIONAL DEMONSTRATION WITH TRANSURANIC WASTE.—No transuranic waste may be received at the WIPP for operational demonstration of the WIPP before—

(1) the Secretary's determination of compliance with the disposal regulations; and

(2) the Administrator's certification to Congress that the Secretary has complied with the disposal regulations.

(j) EXISTING OBLIGATIONS AND AUTHORITIES.—Nothing in this section shall be construed to limit or in any manner affect the Administrator's authority to enforce and the Secretary's obligation to comply with all terms and conditions of the No-Migration Determination.

SEC. 6. COMPLIANCE WITH EPA REGULATIONS AND INCLUSION OF ENGINEERED BARRIERS.

(a) ISSUANCE OF EPA DISPOSAL REGULATIONS.—

(1) PROPOSED REGULATIONS.—Not later than one hundred and eighty days after the date of enactment of this Act, the Administrator shall publish in the Federal Register proposed disposal regulations.

(2) FINAL REGULATIONS.—Not later than two years after the date of enactment of this Act, the Administrator shall publish in the Federal Register final disposal regulations.

(b) ISSUANCE OF EPA CRITERIA FOR DETERMINATION OF COMPLIANCE WITH DISPOSAL REGULATIONS.—

(1) PROPOSED CRITERIA.—Not later than one hundred and eighty days after the date of enactment of this Act, the Administrator shall publish in the Federal Register proposed criteria for the Secretary's determination of compliance with the disposal regulations.

(2) FINAL CRITERIA.—Not later than two years after the date of enactment of this Act, the Administrator shall publish in the Federal Register final criteria for the Secretary's determination of compliance with the disposal regulations.

(c) COMPLIANCE WITH EPA REGULATIONS.—

(1) MANAGEMENT AND STORAGE REGULATIONS.—Beginning on the date of enactment of this Act, the Secretary shall comply with the management and storage regulations at the WIPP.

(2) DISPOSAL REGULATIONS.—

(A)(i) IN GENERAL.—The Secretary shall comply with the disposal regulations at the WIPP. Except as provided in subsection (d), not later than six years after the date of enactment of this Act, the Secretary shall make a determination of compliance with the disposal regulations and submit his determination to the Administrator. In making the determination required by this subsection, the Secretary shall utilize the criteria published by the Administrator under subsection (b) to demonstrate that there is a reasonable expectation that long-term compliance with the disposal regulations will be achieved.

(ii) CERTIFICATION.—The Administrator shall certify to Congress whether the Secretary has complied with the disposal regulations at the WIPP within one year of receipt of the Secretary's determination of compliance.

(iii) JUDICIAL REVIEW.—The certification by the Administrator shall be judicially reviewable in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 701 et seq.), and such review shall not be restrictive by the provisions of section 2271(c) of title 42, United States Code.

(B) INJUNCTION BY A COURT.—If a court of competent jurisdiction orders the Administrator to reissue the regulations issued pursuant to subsection (a) or prevents the Administrator from giving the regulations full force and effect, the Secretary shall base his determination of compliance on the regulations issued pursuant to subsection (a), unless the court order expressly finds and orders that its injunction relates to substantive environmental, public health, or public safety aspects of the regulations directly applicable to the WIPP.

(C) FAILURE TO PUBLISH.—If the Administrator fails to publish in the Federal Register proposed or final disposal regulations pursuant to subsection (a), the Secretary shall base his determination of compliance on the disposal regulations as in effect on November 18, 1985.

(d) FAILURE TO COMPLY.—

(1) IN GENERAL.—If the Secretary has not submitted to the Administrator a determination of compliance with the disposal regulations within six years after the date of enactment of this Act, or the Administrator has certified that the Secretary has not complied with the disposal regulations—

(A) the Secretary shall ensure that the waste is removed within one year thereafter; and

(B) no permit or variance pursuant to section 3004 of the Solid Waste Disposal Act, or other applicable hazardous waste laws, with respect to the WIPP, shall remain in effect later than one year thereafter.

(2) EFFECT OF REMOVAL.—When all transuranic waste has been removed, the WIPP shall be decommissioned. Following the decommissioning, the land withdrawal provided by this Act shall terminate, and the land shall be managed by the Secretary of the Interior through the Bureau of Land Management.

(3) EXTENSION OF DEADLINE.—The deadline for submission of the Secretary's determination to the Administrator referred to in paragraph (1) may be extended for a period of no more than two years at the discretion of the Administrator if—

(A) the Secretary determines that the disposal regulations cannot be complied with by the date referred to in paragraph (1);

(B) the Secretary notifies the Committee on Energy and Natural Resources of the United States Senate, the Committee on Interior and Insular

Affairs of the United States House of Representatives, the State, the Administrator, and the EEG that additional time is needed to comply with the disposal regulations; and

(C) the Administrator determines that additional time would provide relevant and useful data in a timely manner for determining or certifying compliance with the disposal regulations, or for confirming such compliance.

(e) CONFLICT RESOLUTION.—If the State disagrees with the Secretary's determination of compliance with the disposal regulations, the State may invoke the conflict resolution provisions of the Agreement.

(f) ENGINEERED BARRIERS.—

(1) IN GENERAL.—The WIPP shall use engineered barriers as well as natural barriers to isolate the transuranic waste after disposal to the extent required by the applicable regulations of the Environmental Protection Agency. For purposes of this subsection, "engineered barriers" means any backfill, room seals, and other man-made barrier components required by the Administrator.

(2) WASTE FORM MODIFICATIONS.—If appropriate to determine compliance with the disposal regulations, the Secretary shall also include transuranic waste form modifications in the WIPP.

SEC. 7. RESTRICTIONS.

(a) TRANSURANIC WASTE.—

(1) IN GENERAL.—

(A) REM LIMITS FOR REMOTE-HANDLED TRANSURANIC WASTE.—

(i) 1,000 REMS PER HOUR.—No transuranic waste received at the WIPP may have a surface dose rate in excess of 1,000 rems per hour.

(ii) 100 REMS PER HOUR.—No more than 5 percent by volume of the remote-handled transuranic waste received at the WIPP may have a surface dose rate in excess of 100 rems per hour.

(B) CURIE LIMITS FOR REMOTE-HANDLED TRANSURANIC WASTE.—

(i) CURIES PER LITER.—Remote-handled transuranic waste received at the WIPP shall not exceed 23 curies per liter maximum activity level (averaged over the volume of the canister).

(ii) TOTAL CURIES.—The total curies of the remote-handled transuranic waste received at the WIPP shall not exceed 5,100,000 curies.

(C) CAPACITY OF THE WIPP.—The total capacity of the WIPP by volume is 6.2 million cubic feet of transuranic waste.

(2) EXPERIMENTAL PROGRAM.—

(A) BAN ON REMOTE-HANDLED TRANSURANIC WASTE.—No remote-handled transuranic waste may be received at the WIPP until the Administrator has certified to the Congress that the Secretary has complied with the disposal regulations.

(B) LIMITATION.—Before the Secretary has made a determination of compliance with the disposal regulations and the Administrator has certified the compliance to the Congress, only so much transuranic waste as is needed for the experimental program implemented pursuant to section 5, and not to exceed 0.5 percent by volume of the capacity of the WIPP, may be received at the WIPP.

(C) MODIFICATION OF LIMITATION.—The limitation contained in subparagraph (B) may only be modified if the Administrator determines that such a modification will provide relevant and useful data in a timely manner for determining or certifying compliance with the disposal regulations, or for confirming such compliance. In no event may the limit exceed the limitation on volume contained in the No-Migration Determination, or 1.0 percent by volume of the capacity of the WIPP.

(b) HIGH-LEVEL RADIOACTIVE WASTE.—No spent nuclear fuel or high-level radioactive waste may be received at the WIPP.

SEC. 8. RETRIEVABILITY.

(a) REQUIREMENT OF RETRIEVABILITY.—

(1) IN GENERAL.—Transuranic waste emplaced in the WIPP for purposes of the experimental program under section 5 shall be retrievable during the experimental program and for a period of time subsequent to the program needed to provide for its retrieval in the event that—

(A) the Secretary determines or the Administrator certifies that the WIPP does not comply with the disposal regulations;

(B) the transuranic waste needs to be retrieved for engineering modification or for repackaging for permanent disposal; or

(C) such retrieval is necessary to protect the public health and safety and the environment.

(2) ANNUAL DETERMINATION OF RETRIEVABILITY.—The Secretary shall make an annual determination, taking into account the evaluation under section 10(b), of whether all transuranic waste is retrievable and can remain retrievable.

(3) ANNUAL DEMONSTRATION OF RETRIEVABILITY.—The Secretary shall demonstrate, on an annual basis, in conjunction with the determination required in paragraph (2), that a sample of transuranic waste is retrievable.

(b) RETRIEVAL PLAN.—

(1) PREPARATION AND SUBMISSION.—Sixty days after the enactment of this Act, the Secretary shall submit to the Administrator and the State a retrieval plan that provides for the retrieval of transuranic waste from the WIPP should retrieval be required. The retrieval plan shall include contingency plans for—

(A) transport of transuranic waste to any storage facility designated by the Secretary, which is permitted for storage of such waste under the Solid Waste Disposal Act, or other applicable hazardous waste law, and which is located outside of the State, except as provided in subsection (c)(2); and

(B) temporary storage subject to the limitations contained in subsection (c).

(2) IMPLEMENTATION.—The Secretary shall implement the plan or take corrective action to ensure the retrievability of transuranic waste in the event that a determination is made under subsection (a)(2) that the waste is not or will not otherwise remain retrievable.

(c) TEMPORARY OR INTERIM STORAGE OF RETRIEVED TRANSURANIC WASTE.—

(1) Transuranic waste retrieved from the WIPP may be temporarily stored above ground at the WIPP site for a period of up to ninety days if the Secretary determines that retrieval and temporary storage is necessary and that the waste will be managed and returned to the WIPP in accordance with the requirements of this Act. This period may be extended by the State or the Administrator, consistent with the requirements of the Solid Waste Disposal Act, or other applicable hazardous waste law, and if the State or the Administrator determines an extension is consistent with the protection of human health and the environment.

(2) If all or part of the WIPP site is designated as an interim storage facility for transuranic waste, the Secretary must obtain approval from the State or the Administrator in accordance with the Solid Waste Disposal Act, or other applicable hazardous waste law, before any transuranic waste retrieved from the WIPP may be stored at such interim storage facility.

(d) CONFLICT RESOLUTION.—The State may invoke the conflict resolution provisions of the Agreement if it determines that either—

(1) the retrieval plan would not provide for satisfactory retrieval of all transuranic waste from the WIPP should retrieval of such waste be required;

(2) the annual determination of retrievability is incorrect; or

(3) the demonstration of retrievability does not ensure that transuranic waste will be retrievable.

(e) EXISTING AUTHORITY OF THE ENVIRONMENTAL PROTECTION AGENCY AND THE STATE.—

(1) Nothing in this section shall be construed to limit or in any manner affect the Administrator's or the State's authority to enforce, and the Secretary's obligation to comply with, all applicable provisions of the Solid Waste Disposal Act, or other applicable hazardous waste law, and all terms and conditions of the No-Migration Determination.

(2) Upon a determination by the Secretary that transuranic waste cannot remain retrievable, and that corrective action is not possible, the Administrator and the State shall, pursuant to the authorities provided in the Solid Waste Disposal Act, or other applicable hazardous waste law, take action to ensure the retrieval or removal of all transuranic waste in the WIPP.

SEC. 9. TRANSPORTATION.

(a) SHIPPING CONTAINERS.—No transuranic waste may be transported by or for the Secretary to or from the WIPP except in packages—

(1) the design of which has been certified for the transportation of transuranic waste by the Nuclear Regulatory Commission; and

(2) that have been fabricated under a Quality Assurance Program approved by the Nuclear Regulatory Commission.

(b) NOTIFICATION.—In addition to activities required pursuant to the December 27, 1982, Supplemental Stipulated Agreement, prior to any transportation of transuran-

ic waste by or for the Secretary to or from the WIPP, the Secretary shall provide advance notification to States and Indian tribes through whose jurisdiction the Secretary plans to transport transuranic waste to or from the WIPP.

(c) ACCIDENT PREVENTION AND EMERGENCY PREPAREDNESS.—

(1) TRAINING.—

(A) IN GENERAL.—In addition to activities required pursuant to the December 27, 1982, Supplemental Stipulated Agreement, the Secretary shall ensure that technical assistance and funds are provided for the purpose of training public safety officials, and other emergency responders as defined by 29 C.F.R. 1910.120, in any State or Indian tribe through whose jurisdiction the Secretary plans to transport transuranic waste to or from the WIPP. Within thirty days of enactment of this Act, the Secretary shall submit a report to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives and the State on the training provided through fiscal year 1991.

(B) ONGOING TRAINING.—If determined by the Secretary, in consultation with affected States and Indian tribes, to be necessary and appropriate, the training shall continue after the date of enactment of this Act until the transuranic waste shipments to or from the WIPP have been terminated.

(C) REVIEW OF TRAINING.—The Secretary shall review the training, in consultation with affected States and Indian tribes. The training shall also be reviewed by the Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health for compliance with 29 C.F.R. 1910.120.

(D) COMPONENTS OF TRAINING.—The training shall cover procedures required for the safe routine transportation of transuranic waste, as well as procedures for dealing with emergency response situations, including—

(i) instruction of government officials and public safety officers in procedures for the command and control of the response to any incident involving the waste;

(ii) instruction of emergency response personnel in procedures for the initial response to an incident involving transuranic waste being transported to or from the WIPP;

(iii) instruction of radiological protection and emergency medical personnel in procedures for responding to an incident involving transuranic waste being transported to or from the WIPP; and

(iv) a public awareness campaign to provide information to the public about the transportation of transuranic waste to or from the WIPP.

(2) EQUIPMENT.—The Secretary shall enter into agreements to assist, through monetary grants or contributions in-kind, States in acquiring equipment for response to an incident involving transuranic waste transported to or from the WIPP.

(d) TRANSPORTATION SAFETY PROGRAMS.—The Secretary shall provide in-kind, financial, technical, and other appropriate assistance to any State or Indian tribe, through whose jurisdiction the Secretary plans to transport transuranic waste to or from the WIPP, for the purposes of WIPP-specific transportation safety programs not otherwise addressed in this section. These programs shall be developed with, and monitored by, the Secretary.

(e) SANTA FE BYPASS.—No transuranic waste may be transported from the Los Alamos National Laboratory to the WIPP until—

(1) an amount of funds sufficient to construct the Santa Fe bypass has been made available to the State;

(2) the Santa Fe bypass has been completed; or

(3) the Administrator has made the certification required under section 6.

(f) STATE ADVISORY GROUP ON EMERGENCY RESPONSE MEDICAL TRAINING.—

(1) The Governor shall appoint an advisory group of health professionals and other experts in the field to review emergency response medical training programs for the transportation of transuranic waste.

(2) Within ninety days of the date of enactment of this Act, and periodically thereafter, the advisory group shall review the Department of Energy's emergency response medical training programs and report its findings to the State and the Secretary.

(3) The Secretary shall review the findings of the advisory group and, if the Secretary determines that emergency response medical training is inadequate, the Secretary shall take immediate action to correct the inadequacies and, if necessary, suspend transportation of transuranic waste.

(g) CONFLICT RESOLUTION.—If the State disagrees with the Secretary's determination under subsection (f)(3), the State may invoke the conflict resolution provisions of the Agreement.

SEC. 10. MINE SAFETY.

(a) MINE SAFETY AND HEALTH ADMINISTRATION.—The Mine Safety and Health Administration of the Department of Labor shall inspect the mine at the WIPP as frequently, and in the same manner as it evaluates other mine sites under the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.) and shall provide the results of its inspections to the Secretary. The Secretary shall take necessary actions to assure the prompt and effective correction of any deficiency, including suspending specific activities as necessary to address identified health and safety deficiencies.

(b) BUREAU OF MINES.—The Bureau of Mines shall prepare an annual evaluation of the safety of the mine at the WIPP.

SEC. 11. ECONOMIC ASSISTANCE.

(a) PAYMENTS TO THE STATE.—

(1) PAYMENTS FOR OPERATION AND DECOMMISSIONING.—

(A) OPERATION.—The Secretary shall, to such extent and for such amounts as are provided in advance in appropriations Acts, make payments to the State in the amount of $20,000,000 per year—

(i) beginning with the fiscal year in which transuranic waste shipments to the WIPP are initiated; and

(ii) ending with the fiscal year in which decommissioning activities at the WIPP are initiated.

(B) DECOMMISSIONING.—The Secretary shall, to such extent and for such amounts as are provided in advance in appropriations Acts, make payments to the State in the amount of $13,000,000 per year—

(i) beginning with the first fiscal year after the year in which decommissioning activities are initiated; and

(ii) ending with the fiscal year in which the WIPP becomes fully decommissioned.

(C) PAYMENTS TO UNITS OF LOCAL GOVERNMENT.—A portion of the payments under this subsection shall be made available to units of local government in Lea and Eddy counties.

(2) PAYMENTS EQUIVALENT TO TAXES.—There is authorized to be appropriated to the Secretary such sums as are necessary to provide a payment each fiscal year to the State and each unit of local government in which the WIPP site is located. A payment under this subsection shall be determined by—

(A) calculating the amount the State and the unit of local government would receive were they authorized to tax the development and operation of the WIPP in the same manner as the State and the unit of local government tax the other comparable real property and industrial activities occurring within the State and the unit of local government;

(B) calculating the amount paid in the most recent fiscal year by the Department of Energy to reimburse WIPP contractors and subcontractors for taxes, fees, or other payments assessed by the State and any of its local governments for contractor and subcontractor activities attributable to the WIPP;

(C) calculating the actual amount paid in fiscal year 1990 by the Department of Energy to reimburse WIPP contractors and subcontractors for taxes, fees, or other payments assessed by the State and any of its local governments for contractor and subcontractor activities attributable to the WIPP. This amount shall be adjusted to reflect the aggregate percentage change in the Consumer Price Index for consumers published by the Secretary of Labor;

(D) subtracting the amount calculated under subparagraph (C) from the amount calculated under subparagraph (B); and

(E) subtracting the amount calculated under subparagraph (D) from the amount calculated under subparagraph (A).

Payments under this paragraph shall continue until all activities related to the development and operation of the WIPP are terminated at the WIPP site.

(b) WIPP-RELATED BUSINESS AND EMPLOYMENT OPPORTUNITIES.—

(1) IN GENERAL.—To the maximum extent practicable, the Secretary shall continue to encourage business and employment opportunities related to the WIPP that are appropriate for the State, and in particular, for Lea and Eddy counties.

(2) REPORT.—The Secretary shall report annually to the State on the activities conducted pursuant to paragraph (1).

(c) ENVIRONMENTAL MONITORING RESEARCH CENTER.—There is authorized to be appropriated to the Secretary such sums as are necessary to provide funding for the purpose of building, establishing, and operating the Carlsbad Environmental Monitoring Research Center Program, within the Waste Management Education and Research Consortium, to provide independent WIPP environmental assessment and monitoring capabilities in the Carlsbad, New Mexico area.

SEC. 12. ECONOMIC IMPACT MONITORING.

(a) IN GENERAL.—Subject to subsection (b), the Secretary shall make annual payments to the State for the purpose of establishing and maintaining an Impact Assessment Group within the Waste Management Education and Research Consortium, or any other group or institution the State considers appropriate, to prepare annual reports on the economic impact of the activities at the WIPP.

(b) AUTHORIZATION.—

(1) From amounts appropriated in fiscal year 1992, the Secretary shall pay $1,000,000 to the State to establish the Group and to perform a review.

(2) In each subsequent fiscal year after the date of enactment of this Act, the Secretary shall pay $750,000, to such extent and for much amounts as are provided in advance in appropriations Acts, to the State to perform the annual reviews.

(c) ANNUAL REPORTS.—

(1) IN GENERAL.—Annual reports prepared under subsection (a) shall be submitted to the Governor, the Secretary, and affected units of local government.

(2) CONTENTS.—The reports shall quantify the impacts of the WIPP, including those impacts on the State and affected units of local government.

SEC. 13. DECOMMISSIONING OF THE WIPP.

(a) PLAN FOR ENVIRONMENTAL CONTROLS AFTER DECOMMISSIONING.—

(1) IN GENERAL.—Not later than three years after the date of enactment of this Act, the Secretary shall submit a preliminary plan for active and passive institutional controls for managing the WIPP after decommissioning to the Committee on Energy and Natural Resources of the United States Senate, the Committee on Interior and Insular Affairs of the United States House of Representatives, the State, and the EEG. The plan shall be updated as the Secretary determines necessary.

(2) CONSISTENCY WITH DISPOSAL REGULATIONS.—In addition to activities required pursuant to the December 27, 1982, Supplemental Stipulated Agreement, the plan shall be consistent with the disposal regulations.

(3) CONFLICT RESOLUTION.—If the State disagrees with the adequacy of the Secretary's plan under this subsection, the State may invoke the conflict resolution provisions of the Agreement.

(b) MANAGEMENT PLAN FOR THE WIPP SITE AFTER DECOMMISSIONING.—Not later than two years after the date of enactment of this Act, the Secretary shall publish in the Federal Register a preliminary plan for the management and use of the WIPP site following the decommissioning of the WIPP. The plan shall be updated as the Secretary determines necessary.

SEC. 14. OIL AND GAS LEASES.

There are authorized to be appropriated to the Secretary such sums as are necessary to provide compensation for the cancellation of the Federal Oil and Gas Leases No. NMNM 02953 and 02953C.

SEC. 15. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

SEC. 16. CONSULTATION AND COOPERATION AGREEMENT.

Nothing in this Act shall affect the Agreement between the State and the United States Department of Energy except as explicitly stated herein.

SEC. 17. REDRESS OF ADMINISTRATIVE WITHDRAWAL.

Transuranic waste introduced at the WIPP site prior to the enactment of this Act shall—

(1) immediately be removed from the WIPP site if it is not being used to carry out the experimental program at the time the program is implemented under section 5;

(2) be removed promptly from the WIPP site in the event that the requirements of section 7 are not complied with; and

(3) be subject to the requirements for retrievability under section 8 of this Act.

Purpose of the Measure

The purpose of S. 1671 as reported is to withdraw 10,240 acres of land in Eddy County, New Mexico for the exclusive use of the Department of Energy (DOE) for construction, operation, decommissioning, and post-decommissioning control of the Waste Isolation Pilot Plant (WIPP). This land is currently managed by the Department of the Interior, and utilized by DOE under an administrative land order, and would be permanently withdrawn and transferred to control by DOE by this legislation.

WIPP is a research and development facility that was established by Public Law 96–164 for the purpose of demonstrating the safe disposal of radioactive waste resulting from the defense activities and programs of the United States. S. 1671 would authorize DOE to conduct an experimental program at WIPP, establish a significant regulatory role for the Environmental Protection Agency (EPA) at WIPP, enhance the role of the State of New Mexico (the State), and impose additional limitations and conditions on the mission and operation of the facility.

Summary of Major Provisions of Committee Amendment

S. 1671 withdraws the 10,240-acre site surrounding WIPP and permanently transfers the land to DOE for use in fulfilling the mission of the WIPP facility.

The bill directs the Secretary of Energy (the Secretary) to develop a management plan for the withdrawn land to continue existing domestic livestock grazing, to allow hunting and trapping, and to preserve the wildlife habitat at the site. There is also a prohibition on surface and subsurface mining except for two existing oil and gas leases. The two leases will be studied by the Secretary of the Interior to determine whether they should be exchanged or canceled.

The Secretary is directed to prepare a proposal for an experimental program at WIPP that is to include experiments that will enable the Secretary to make a determination whether the WIPP facility will comply with disposal regulations to be promulgated by EPA. The plan is subject to review and comment by the State, EPA, the National Academy of Sciences and the Environmental Evaluation Group (EEG), a quasi-state technical oversight group funded through a contract with DOE. There is also a procedure for the Secretary to certify that all or part of the experimental plan was prepared and the review requirements of the bill were satisfied prior to enactment of this Act.

The bill also requires the preparation of a plan for decommissioning and post-decommissioning environmental controls at WIPP and the preparation of a separate plan for management of the WIPP site following decommissioning.

The bill limits the amount of transuranic waste that may be emplaced at WIPP during the experimental program to 0.5 percent by volume of the design capacity of WIPP. The amount may be in-

creased to no more than 1 percent if the EPA approves the increase and other conditions are met.

The bill mandates compliance with regulations promulgated by EPA for management, storage, and disposal of transuranic waste as set forth in 40 C.F.R. 191. EPA's regulations are in two parts: Subpart A containing regulations for management and storage of waste, and Subpart B containing regulations for permanent disposal of waste. Subpart B of EPA's regulations was remanded to EPA by a federal court in 1987 to be repromulgated. The bill directs EPA to publish final disposal regulations (Subpart B) within two years from the date of enactment.

Subpart A of the regulations would apply to WIPP upon the receipt of transuranic waste at the facility to begin the experimental program. Prior to permanent disposal of transuranic waste at WIPP, the Secretary must make a determination that WIPP complies with the disposal regulations and the EPA Administrator must certify that the Secretary's determination of compliance is valid.

The bill requires DOE to remove all transuranic waste from WIPP if the Secretary has not submitted his determination of compliance to the EPA Administrator within 6 years of the date of enactment. The time period can be extended if the Secretary and the EPA Administrator determine that additional time is necessary to determine or certify that WIPP complies with the disposal regulations.

The Secretary is required to make an annual determination that the transuranic waste emplaced at WIPP during the experimental program is retrievable and will remain retrievable throughout the experimental program. The Secretary is directed to prepare a plan to retrieve the waste should he determine the waste may no longer be retrievable. The retrieval plan shall include contingency plans for removal of the transuranic waste from the WIPP site.

S. 1671 states that any transuranic waste emplaced at WIPP prior to enactment of this Act must meet the requirements of this Act regarding waste types, quantities and retrievability and must be used only for the experimental program. Otherwise, the waste must be moved.

The bill provides for a transportation safety program, technical assistance and funds to ensure training for accident prevention and emergency preparedness for public officials, emergency response personnel and medical personnel in any State or Indian Tribe through whose territory transuranic waste destined for WIPP will be shipped. A State advisory group is established to report on the adequacy of the medical training provided.

No shipments from Los Alamos National Laboratory can be made to WIPP until funds sufficient to construct a by-pass around the city of Santa Fe have been made available to the State, the by-pass has been completed, or the EPA has certified that WIPP complies with EPA's disposal regulations.

All packages used to transport transuranic waste to WIPP must be certified by the Nuclear Regulatory Commission for transport of transuranic waste and fabricated under a Quality Assurance Program by NRC.

The Carlsbad Environmental Monitoring Research Center Program is created and funded to provide independent environmental assessment and monitoring capabilities to assess effects of WIPP in the Carlsbad, New Mexico area. The Secretary is also directed to encourage business and employment opportunities related to WIPP that are appropriate, in particular, in Lea and Eddy counties. Payments equivalent to taxes are required to be made to the State and to units of local government in which WIPP is located.

The bill directs the Mine Safety and Health Administration to inspect WIPP and provide results of its inspections to the Secretary. The Secretary is directed to correct any health and safety deficiencies. The Bureau of Mines is also directed to prepare an annual evaluation of the safety of WIPP.

Economic assistance is provided to the State in the amount of $20 million per year beginning in the year in which transuranic waste shipments to WIPP are initiated and continuing through the year in which decommissioning of WIPP is initiated. Thereafter, the State will receive $13 million per year until WIPP is fully decommissioned. The bill also provides for $1 million in 1992 and $750,000 for each year thereafter to establish and maintain a group to assess and report annually on the economic impact of activities at WIPP.

A conflict resolution process was established in agreements between DOE and the State beginning in 1981. The bill permits the State to invoke that process if it disagrees with specific plans and determinations required by the bill. The bill also explicitly states that the Agreement for Consultation and Cooperation between the State of New Mexico and the Department of Energy is not affected in any way by the provisions of this bill.

Background and Need

BACKGROUND

The Waste Isolation Pilot Plant is a research and development facility of the Department of Energy authorized by Public Law 96–164 for the purpose of demonstrating the safe disposal of radioactive waste generated by DOE's nuclear weapons production activities.

The United States has been generating radioactive waste in its national defense programs since the 1940's. Because much of this waste requires isolation from the biosphere for long periods of time, it has been stored in a retrievable manner at Government sites around the country pending disposal.

Much of this waste is transuranic waste, which is any solid waste, other than high-level radioactive waste, that is contaminated with nuclides heavier than uranium to the extent that it is not suitable for surface disposal. Waste that would fall into this category is that with transuranic concentrations of radioactivity greater than 100 nanocuries per gram of waste. The transuranic waste that would be emplaced at WIPP results primarily from plutonium reprocessing and fabrication, as well as from research and development activities at various DOE facilities.

Transuranic waste exists in a variety of physical forms ranging from unprocessed laboratory trash (such as absorbent papers, tools,

glassware, protective clothing, and gloves) to solidified sludges from waste water treatment. About 60 percent of this transuranic waste is mixed with hazardous waste components. The major chemical component in this mixed waste is metallic lead, which exists primarily in the form of glovebox parts and lead-lined gloves and aprons. Some mixed waste also contains traces of organic cleaning solvents such as methylene chloride and carbon tetrachloride.

Transuranic waste is classified, for purposes of handling at WIPP, according to the radiation dose rate at the waste package or container surface and divided into two categories: contact-handled and remote-handled. Ninety-seven percent of transuranic waste by volume is contact-handled and is stored in plastic bags inside 55-gallon, polyethylene lined steel drums. Contact-handled waste emits only alpha radiation, which is dangerous if inhaled or ingested but will not penetrate the skin. Because alpha radiation also cannot penetrate the plastic or the drum, the drums can be handled directly. The remaining 3 percent of transuranic waste by volume is contaminated with fission products—primarily cesium and strontium—and produces radiation that coule penetrate metal drums. This transuranic waste is remotely handled and stored and transported in shielded casks.

Prior to 1970, transuranic waste was placed in shallow land burial as low-level radioactive waste, and approximately 192,000 cubic meters was disposed of in this fashion. Since 1970, however, transuranic waste has been stored in metal drums or boxes so that it can be easily retrieved and moved to a permanent disposal facility like WIPP. About 62,000 cubic meters of transuranic waste is currently stored in this manner at 10 DOE sites around the country. These sites are Lawrence Livermore National Laboratory in Livermore, California; Rocky Flats Plant in Golden, Colorado; Idaho National Engineering Laboratory in Idaho Falls, Idaho; Argonne National Laboratory in Argonne, Illinois; Nevada Test Site in Mercury, Nevada; Los Alamos National Laboratory in Los Alamos, New Mexico; Mound Facility in Miamisburg, Ohio; Oak Ridge Reservation in Oak Ridge, Tennessee; Savannah River plant in Aiken, South Carolina; and Hanford Reservation in Richland, Washington.

As noted earlier, about 60 percent of the transuranic waste to be disposed of in WIPP is mixed with hazardous waste components. As such, the mixed waste is subject to both the regulatory requirements of the Solid Waste Disposal Act (for the hazardous components) and the regulartory requirements of the Atomic Energy Act (for the radioactive components). For the most part, the hazardous components of this waste are so-called "listed" wastes under subtitle C of the Solid Waste Disposal Act and, therefore, subject to the land disposal restrictions contained in section 3004 of that Act. The land disposal restrictions include requirements for pretreatment of waste prior to disposal and restrictions on storage. These requirements, however, were developed strictly for hazardous waste and did not envasion the situation where hazardous waste would be mixed with transuranic waste, such as at WIPP, and where pretreatment of waste might result in greater occupational radiation exposures to workers.

Under section 3004 of the Solid Waste Disposal Act, it is possible to petition EPA for a variance from the land disposal restrictions to allow disposal of untreated mixed waste in WIPP based on a demonstration that "the waste will not migrate from the disposal unit at unacceptable concentrations for as long as the waste remains hazardous." On November 14, 1990, EPA granted such a variance to DOE for purposes of the experimental program at WIPP and published its Final Conditional No-Migration Determination for the Department of Energy Waste Isolation Pilot Plant (55 FR 47700). as a condition of that variance, DOE is restricted in the amount of transuranic waste that can be used during the experimental program and can emplace no more than 8,500 55-gallon drums of waste, or 1 percent by volume of the design capacity of WIPP. Prior to permanent disposal at WIPP, DOE would have to obtain an additional variance from EPA for that purpose.

The Atomic Energy Commission, which managed the nuclear weapons program from 1947 through 1974, began looking at salt formations near Carlsbad, New Mexico as potential locations for a repository for defense waste in 1973. The AEC focused its efforts on salt beds in New Mexico following an unsuccessful effort in 1972 at a salt mine in Lyons, Kansas. The National Academy of Sciences had recommended in 1957 salt deposits as a preferable geologic media because they are generally located in stable areas with few earthquakes, because salt does not have groundwater movement through it, and because the plastic movement of salt will quickly seal any tunnels, shafts, or cracks.

Site investigations began at the WIPP site in 1975, and funding for research, development, and construction of WIPP was authorized in 1976 in Public Law 94-187. During the late 1970's, the Administration changed the mission of WIPP several times, first to be a facility licensed by the Nuclear Regulatory Commission and to provide for disposal of commercial spent nuclear fuel as well as defense waste and later to be a demonstration facility for defense high-level radioactive waste. Ultimately, the facility was authorized in December 1979 in Public Law 96-164 as a research and development facility for defense nuclear waste exempt from regulation by the Nuclear Regulatory Commission.

Public Law 96-164 also directed the Secretary to seek to enter into a written agreement for consultation and cooperation with the State of New Mexico. Under Public Law 96-164, this agreement was required to include the rights of the State to comment on, and make recommendations with regard to, public health and safety aspects of the project prior to certain major decision points; procedures for the Secretary to receive, comment on, and resolve comments and recommendations made by the State; and procedures for further review and amendment of the agreement. The required Agreement for Consultation and Cooperation between the Department of Energy and the State of New Mexico was executed on July 1, 1981. The agreement was subsequently amended by the First Modification on November 30, 1984, and by the Second Modification on August 4, 1987. In addition, DOE entered into a Stipulated Agreement with the State on July 1, 1981, in settlement of a lawsuit New Mexico had filed against DOE. A Supplemental Stipulated Agreement was entered into on December 27, 1982; and an

Agreement of Principles was entered into on May 10, 1988. These agreements impose detailed limitations and conditions on DOE's operation of WIPP and provide the State with a significant role in WIPP'S operation.

Construction of the WIPP facility was initiated in 1981. The facility itself consists of several surface buildings, four access and ventilation shafts extending about 2,150 feet below the surface. an extensive network of waste storage tunnels, and waste storage rooms. The transuranic waste will be stored at WIPP in a 100-acre storage area located near the middle of salt beds that are nearly 2,000 feet thick. Some of the major advantages of the WIPP site are that the salt beds are among the thickest in the nation, the area is uninhabited, and there are no holes for mining or oil drilling penetrating the storage area.

Over $1 billion has been spent on research, development, and construction of the WIPP facility. The operating cost for the WIPP facility is estimated at about $100 million annually. The total estimated cost over the 25-year operating life of the facility is in excess of $2.5 billion.

DOE's target date for beginning to receive transuranic waste at WIPP for the experimental program is November 1991 or soon thereafter. Full operation of the WIPP facility will be preceded by an experimental test phase during which time a series of experiments will be conducted using a limited amount of transuranic waste.

During the experimental program, experiments will be conducted to reduce uncertainties associated with the prediction of natural processes that might affect the long-term performance of WIPP. During the experimental program, some experiments will use transuranic waste and others will not. Among the experiments that will use transuranic waste are laboratory, dry bin, wet bin, and solubility tests. Other tests that will not use transuranic waste include large-scale seal tests, rock mechanics tests, brine inflow and radionuclide migration tests, and hydrologic tests. Results of all of these tests will be used to determine whether transuranic waste can be permanently disposed of in WIPP in compliance with the EPA disposal regulations. If EPA certifies that WIPP can comply with the regulations, DOE can then begin operation of WIPP as a permanent disposal facility.

NEED FOR THE LEGISLATION

Lands owned by the United States and administered by the Bureau of Land Management are open to public use under the mining and public land laws unless legally withdrawn and reserved for a particular public purpose. Under section 204 of the Federal Land Policy and Management Act of 1976, public lands may be withdrawn by administrative land withdrawal by the Secretary of the Interior. The Secretary may withdraw parcels of 5,000 or more acres for no more than 20 years at a time. Administrative land withdrawals can be renewed but cannot accomplish a permanent land withdrawal.

The WIPP site consists of 10,240 acres in Eddy County, New Mexico. This land consists of sections 15 through 22 and sections 27

through 34 of Township 22 South, Range 31 East, NMPM, in Eddy County. At the time DOE began work at the site, 8,960 acres were public land administered by the Bureau of Land Management and the remaining 1,280 acres were owned by the State. Since then, BLM has acquired the entire site and has acquired all except two outstanding oil and gas leases.

Currently, the land is utilized under an administrative land withdrawal (Public Land Owner 6826) issued by the Department of the Interior in January 1991. This administrative land withdrawal expires in June 1997 and is limited for purposes of the experimental program. A notice to proceed was issued by the Department of the Interior on October 3, 1991, thereby authorizing DOE to receive transuranic waste at WIPP for purposes of the experimental program.

DOE is seeking a permanent land withdrawal for several reasons. The EPA regulations for disposal of radioactive waste, which were remanded in 1987, required that DOE exercise active institutional control over the disposal site for up to 100 years and passive control thereafter. It is likely that the regulations will contain similar requirements when repromulgated. Since DOE has statutory responsibility for managing radioactive waste, the agency would like to have permanent jurisdiction and control over the site. In addition, because the period of active use and institutional controls will exceed the normal 20-year period for administrative land withdrawals, DCE believes that a statutory, permanent land withdrawal is desirable.

Public Law 96–164 grants broad authority to DOE to conduct research and development at WIPP. DOE has agreed to significant limitations on the exercise of that authority and conditions on the operation of WIPP under agreements with the State (Agreement for Consultation and Cooperation and subsequent agreements). Legislation is not necessary to enforce these limitations or conditions. Nonetheless, the Committees believes there is merit in codifying in law many of these limitations and conditions with respect to WIPP. This legislation also includes a number of additional limitations, conditions, and restrictions on operation of WIPP.

Legislative History

S. 1671 was introduced on August 2, 1991, by Senators Domenici and Bingaman, and was referred to the Committee on Energy and Natural Resources.

The full Committee held a field hearing in Albuquerque, New Mexico on September 21, 1991. Testimony was received from witnesses representing the Department of Energy, the Department of the Interior, the State of New Mexico, affected local governments, and public interest groups. Written testimony was also received from the Environmental Protection Agency.

The Committee met in open business session to consider the legislation on October 16, 1991.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on October 16, 1991, by majority vote of a

quorum present recommends that the Senate pass S. 1671, if amended as described herein.

The rollcall vote on reporting the measure was 19 yeas, 0 nays as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers [1]	
Mr. Ford	
Mr. Bradley [1]	
Mr. Bingaman	
Mr. Conrad	
Mr. Akaka	
Mr. Fowler [1]	
Mr. Shelby [1]	
Mr. Wellstone [1]	
Mr. Wallop	
Mr. Hatfield [1]	
Mr. Domenici	
Mr. Murkowski	
Mr. Nickles [1]	
Mr. Burns	
Mr. Craig	
Mr. Seymour	
Mr. Garn [1]	

[1] Indicates vote by proxy

Committee Amendments

During consideration of S. 1671, the Committee adopted an amendment in the nature of a substitute. A detailed explanation of the provisions of the bill, as amended by the substitute, is contained in the Section-by-Section Analysis.

Section-by-Section Analysis

Section 1 provides the short title of the bill, the "Waste Isolation Pilot Plant Land Withdrawal Act of 1991".

Section 2 contains definitions of terms used in the bill.

Section 3 establishes the location of and jurisdiction over the land withdrawn for WIPP, and revokes existing public land orders governing use of the land.

Subsection (a) withdraws the land described in subsection (c) from operation of the public land laws, including the mining laws, mineral leasing laws, and geothermal leasing laws; transfers this land from the Secretary of the Interior to the Secretary of Energy; and reserves use of the land for the purposes of WIPP.

Paragraph (3)(B) of subsection (a) disclaims any reservation of water rights and directs that water rights must be obtained according to State law.

Subsection (b) revokes previous public land orders governing the use of the land. These orders are Public Land Order 6403, issued June 29, 1983, which withdrew the land for construction of WIPP, and Public Land Order 6826, issued January 28, 1991, which modi-

fied the previous order for purposes of the experimental program at WIPP.

Subsection (c) defines the boundaries of the land withdrawn by reference to an October 1990 map issued by the Bureau of Land Management and requires the Secretary of the Interior to publish a legal description of the WIPP site in the Federal Register and to file copies of the legal description and the map with the appropriate committees of Congress. This land consists of approximately 10,240 acres of land in Eddy County, New Mexico.

Subsection (d) provides that the map and legal description of the WIPP site shall have the same force and effect as if they were included in the legislation.

Section 4 assigns management responsibility for the WIPP site to the Secretary and directs the Secretary to consult and cooperate with the State and the EEG in carrying out these responsibilities. The Secretary is not required by this section to negotiate a consultation and cooperation agreement with the EEG, nor does the section require any new agreement between the Secretary and the State.

This section also directs DOE to develop a management plan for the WIPP site within one year of the date of enactment. In carrying out its management of the withdrawn land, DOE is directed: to permit grazing to continue where established prior to the date of enactment; to permit hunting and trapping in accordance with State and Federal laws and regulations; to preserve the wildlife habitat to the extent possible; and to dispose of excess salt deposits that are extracted from WIPP and not needed for backfill in accordance with existing law.

This section states that surface or subsurface mining unrelated to the mission of WIPP is prohibited on the withdrawn land, except as specifically provided in subclause (II) of subsection (b)(2)(B)(v). The Committee understands that there are currently two outstanding oil and gas leases (Federal Oil and Gas Leases No. NMNM 02953 and 02953C), which are located within the WIPP land withdrawal boundary. DOE has testified that neither of these leases cause a threat to the integrity of the WIPP site because the rights under the leases are restricted to depths below the level of 6,000 feet as a result of condemnation in 1977. The WIPP facility itself extends only to 2,150 feet below the surface. The Committee believes that further consideration of this matter is warranted, however.

Subclause (II) directs the Secretary of the Interior to undertake a study of the effects that development activities on these two leases might be expected to have on the activities to be conducted at the WIPP site. As part of this study, the Secretary of the Interior is directed to include recommendations on the advisability of negotiating an exchange of the leases for other Federal oil and gas leases or canceling the leases. Activities on the leases will be subject to reasonable restrictions imposed by the State, the Secretary, and the Secretary of the Interior. It is not the Committee's intention to revoke any existing rights held by the lease holders.

Subsection (c) is self-explanatory.

Subsection (d) is self-explanatory.

Subsection (e) is self-explanatory.

Section 5 authorizes DOE to implement an experimental program at WIPP subject to the review process established by this section and directs the Secretary to prepare a proposal for such an experimental program. The review process contained in this section is intended to apply to any experimental program proposal prepared after the date of enactment of this Act as well as to any substantive modification to the experimental program after the date of enactment of this Act.

Subsection (a) authorizes the Secretary to carry out an experimental program at WIPP subject to specified limitations on that authority.

Subsection (b) directs the Secretary to prepare a proposal for an experimental program at WIPP, specifies what should be included in the program proposal, and directs the Secretary to submit the proposal and supporting documentation to the State, the Administrator, the National Academy of Sciences, and the EEG. The Secretary is also directed to give notice in the Federal Register of the availability of the experimental program proposal and provide an opportunity for public access to the proposal and supporting documentation. In order to ensure that these documents are easily accessible to interested members of the public, the Secretary is encouraged to place a copy of these documents in local public libraries in the vicinity of WIPP.

In preparing the experimental program proposal, the Secretary is required to make a determination that the proposed experiments will provide relevant and useful data in a timely manner for making a determination of compliance with the disposal regulations, or for confirming such compliance, and for the Administrator's certification of compliance.

The experiments that will be conducted by DOE at WIPP are designed to provide information relevant to the Secretary's determination of compliance as well as WIPP's ability to comply with the disposal regulations over the long-term. While the initial tests with transuranic waste, referred to as bin-scale tests, are expected to provide the necessary and sufficient data to allow for a determination of compliance, the later tests with transuranic waste, referred to as alcove tests, are expected to provide longer-term data to validate gas generation models and to predict realistic behavior of the entire transuranic waste inventory. The early alcove test results can be used in the determination of compliance to support a decision to proceed with the disposal phase at WIPP. The longer-term results from the alcove test program will then be used to confirm the earlier performance assessments and will be used to support any final decision on closure and decommissioning of WIPP after completion of disposal operations.

In making a determination that experiments conducted during the experimental program will be relevant and useful in a timely manner, the Secretary is expected to take into consideration the need for data both to make an initial determination of compliance with the disposal regulations as well as to monitor and confirm the long-term performance of WIPP consistent with the disposal regulations.

Subsection (c) sets forth the process for review, comment, and evaluation of the experimental program proposal by the State, the

Administrator, the National Academy of Sciences, and the EEG. After receiving the final evaluations under paragraph (3) of this subsection, the Secretary is directed to give notice of receipt in the Federal Register and to ensure that these documents are easily accessible to interested members of the public.

Subsection (d) states that the State may invoke the conflict resolution provisions of the Agreement for Consultation and Cooperation if the State disagrees with the Secretary's final experimental program plan. The conflict resolution process included in the terms of the Agreement is a 120-day mediation process used to resolve disagreements between the State and DOE.

Under the conflict resolution process contained in the Agreement, the State and DOE must first meet to discuss in detail the matter about which there is disagreement. Within 10 calendar days after the discussion, DOE must advise the State in writing what action, if any, is contemplated with respect to the State's concern. If the State is not satisfied by that written determination, then the Governor must notify the Secretary in writing within 10 calendar days that the State intends to invoke the conflict resolution provisions of the Agreement. Within 30 days of the governor's notification, the State and DOE shall appoint a mutually agreed upon recognized, independent expert in the particular field involved as the conflict resolution hearing officer. Within 15 days of appointment of the hearing officer, the State and DOE shall each submit to the hearing officer a written statement of their respective positions and the basis for the position. Within 30 days of receipt of the information, the hearing officer shall submit his written recommendations to the Secretary and the State. Within 10 days of receipt of the written recommendations, the State may also submit their own written comments and recommendations to the Secretary. Within 25 days of receipt for the written recommendations, the Secretary shall issue a written decision on the matter before him and include the basis for such decision. This written decision by the Secretary shall then constitute final agency action on and resolution of the matter.

During the pendency of the conflict resolution process, DOE is prohibited from conducting any activity inconsistent with the concern or concerns raised by the State unless specifically authorized in writing by the Secretary or agreed to in writing by the Governor.

Subsection (e) sets forth the process for approval by the EPA Administrator of any modification to the experimental program that would increase the volume of transuranic waste emplaced at WIPP beyond 0.5 percent by volume. Any such modification would be subject to the review process in subsections (b) and (c) and would be subject to the approval of the Administrator. If the State disagrees with a decision to increase the volume of waste beyond 0.5 percent, the State may invoke the conflict resolution provisions of the Agreement for Consultation and Cooperation, as described in subsection (d).

Subsection (f) describes the process for review, comment, and evaluation of the experimental program if all or part of the experimental program proposal was prepared prior to the enactment of this Act and if an opportunity for review, comment, and evaluation

has been provided prior to enactment. Under subsection (f), the Secretary would be authorized to proceed with the experimental program after submitting to Congress documentation of the review, comment, and evaluation process that took place prior to enactment of this Act.

While the Secretary has not to date published a single, comprehensive document outlining the proposed experimental program plan, as required by subsection (b), the Secretary has provided to the State and other outside review groups detailed information and documentation of his plans for the experimental program, and these documents have undergone a significant amount of review. For example, the Secretary published a draft WIPP Test Phase Plan: Performance Assessment in April 1989. Comments on this draft document were provided to DOE by the National Academy of Sciences, the State, EPA, the EEG, and members of the WIPP Blue Ribbon Panel. Following incorporation of comments received, a draft final plan was published in December 1989. The document was then again reviewed by these external review groups and comments were submitted to DOE. This document was then published in April 1990 as the WIPP Test Phase Plan: Performance Assessment (Rev. 0).

Other documents related to the Secretary's experimental program plan were reviewed by independent review groups beginning in 1988 with publication of the Final Safety Analysis Report (FSAR). This document was reviewed by the State, the EEG, and the Advisory Committee on Nuclear Facility Safety (ACNFS). The Secretary provided written responses to each of the commenters and issued the FSAR in June 1990. A subsequent draft addendum to the FSAR was issued in February 1991, which included a safety analysis of the dry bin tests. This addendum was reviewed by the State, the EEG, and the ACNFS and published in August 1991. Details of the experimental program were also included in the Supplemental Environmental Impact Statement (SEIS) issued for public review and comment in April 1989. The final SEIS was then issued in January 1990, and the record of decision was published in June 1990. The State, EPA, and the EEG have also reviewed and provided comment on DOE's performance assessment methodologies published in the document "Preliminary Comparison with 40 C.F.R. Part 191, Subpart B for the Waste Isolation Pilot Plant, December 1990."

The Committee is not making an independent judgment of the adequacy of these documents or the review process to date. However, the Committee substitute does not require the Secretary to publish a proposal for an experimental program plan and initiate a process of review of the program plan after the date of enactment of this Act if the elements of such an experimental program plan have already been prepared and reviewed prior to the date of enactment of this Act. Therefore, this subsection sets forth a process for providing documentation to Congress that there has been adequate opportunity for review of the experimental program prior to the date of enactment of this Act. Under these circumstances, the Secretary is authorized to proceed with the experimental program after submitting the necessary documentation to Congress.

This subsection does not, by its terms, provide the State an opportunity to invoke the conflict resolution provisions of the Agreement for Consultation and Cooperation with respect to review of the experimental program under the circumstance where the proposal has been prepared prior to the enactment of this Act. The Committee does not intend, however, to prohibit conflict resolution with respect to this proposal if the right to invoke conflict resolution would otherwise be available under the Agreement.

Subsection (g) is self-explanatory.

Subsection (h) is self-explanatory.

Subsection (i) states that no transuranic waste may be received at WIPP for purposes other than experimentation until after the Secretary has made a determination of compliance with the disposal regulations and the Administrator has certified to Congress that the Secretary has complied with the regulations.

Subsection (j) is self-explanatory.

Section 6 directs EPA to promulgate regulations for permanent disposal of radioactive waste and sets out a process for the Secretary to make a determination of compliance with those regulations and for the EPA Administrator to certify to Congress that DOE has complied with the regulations.

Subsection (a) directs EPA to promulgate new proposed regulations for the permanent disposal of radioactive waste within 180 days of the date of enactment and to issue final regulations within 2 years of the date of enactment.

Under section 121(a) of the Nuclear Waste Policy Act of 1982, section 161b. of the Atomic Energy Act of 1954, and section 2(a)(6) of Reorganization Plan No. 3 of 1970, EPA is responsible for setting standards for protecting the environment from the escape of radioactive materials from nuclear waste repositories. EPA initially issued regulations establishing these standards on November 18, 1985 in two parts: Subpart A establishing regulations for management and storage of waste; and Subpart B establishing regulations for permanent disposal of waste. These regulations are set forth in 40 C.F.R. 191.

Subpart B, containing the regulations for permanent disposal, was struck down on July 17, 1987 by the U.S. Court of Appeals for the First Circuit because EPA had not adequately explained certain aspects of the regulations and had not given the public adequate notice and opportunity to comment on certain requirements. EPA is now in the process of revising the subpart B regulations and expects to publish proposed regulations by May 1992 and final regulations by June 1993. To ensure that the regulations are repromulgated promptly, section 6 sets a deadline for issuance of the draft and final regulations for permanent disposal.

Subpart A, containing the regulations for management and storage, will apply to WIPP upon the receipt of transuranic waste at the facility to begin the experimental program. Subpart B, containing the regulations for disposal, will apply to WIPP when it is determined to be a permanent disposal facility and when there is no intent of recovering the waste. In subpart A of its regulations in 40 C.F.R. 191, EPA has determined that disposal in a mined geologic repository such as WIPP occurs when all of the shafts to the repository are backfilled and sealed. According to the provisions of this

section, prior to the emplacement of any transuranic waste for permanent disposal in WIPP, the Secretary must make a determination that the WIPP facility will comply with the regulations for deep geologic disposal for as long as the regulations require, and the EPA Administrator must certify that the Secretary's determination is valid.

Subsection (b) directs EPA to issue proposed and final criteria for use by the Secretary in determining compliance with the disposal regulations. These criteria are intended to serve as a basis for the Secretary to demonstrate that there is a reasonable expectation that long-term compliance with the disposal regulations will be achieved.

Subsection (c)(1) states that the Secretary shall be subject to the subpart A regulations for management and storage as of the date of enactment.

Subsection (c)(2) directs the Secretary to comply with EPA's disposal regulations and directs the Secretary to submit to the EPA Administrator a determination of compliance with the regulations not later than 6 years after after the date of enactment. In making this determination of compliance, the Secretary is expected to utilize the criteria publish by the Administrator under subsection (b) to demonstrate that there is a reasonable expectation that long-term compliance with the disposal regulations will be achieved.

Within one year of receipt of the Secretary's determination, the Administrator is directed to certify to Congress whether the Secretary has complied with the disposal regulations. Prior to making this certification, the Administrator is expected to conduct a comprehensive review of the Secretary's determination and make an independent judgment of whether there is a reasonable expectation that long-term compliance with the disposal regulations will be achieved. Certification by the Administrator shall be judicially reviewable in accordance with the Administrative Procedure Act (5 U.S.C. 701 et. seq.).

In the event that the new regulations are again remanded by a court of competent jurisdiction, the Secretary is directed by paragraph (2)(B) of subsection (c) to base his determination of compliance on the new regulations, regardless of the remand, unless the court specifically finds that there are substantive environmental, public health, or public safety flaws in such regulations that are directly applicable to WIPP. In the event that EPA fails to promulgate or issue the new regulations, the Secretary is directed by paragraph (2)(c) of subsection (c) to base his determination of compliance on the old EPA standards as they were in effect on November 19, 1985. Based on testimony presented during consideration of this legislation, the Committee believes that the deadlines contained in subsection (a) for promulgation of new regulations provide a reasonable period of time for completion of this task.

Subsection (d) sets forth the process to be followed in the event that DOE fails to comply with the disposal regulations. The process in subsection (d) would apply under two circumstances: if the Secretary has not submitted to the Administration a determination of compliance with the disposal regulations within six years after the date of enactment; or if the Administrator certifies that the Secretary has not complied with the disposal regulations. In either of

these two circumstances, the Secretary is directed to remove any transuranic waste from WIPP within one year. The WIPP project would be terminated, and no permit or variance under section 3004 of the Solid Waste Disposal Act could remain in effect later than one year thereafter. As soon as the waste is removed from WIPP, the site would be decommissioned and the land would then be transferred back to the Bureau of Land Management.

The trigger date for this process to terminate the WIPP project could be extended for no more than 2 years at the discretion of the Administrator if the Secretary notifies the appropriate committees of Congress that additional time is needed to comply with the disposal regulations and if the Administrator determines that the additional time is justified.

Subsection (e) states that the State may invoke the conflict resolution provisions of the Agreement for Consultation and Cooperation, as described in section 5(d), if it disagrees with the Secretary's determination of compliance with the disposal regulations.

Subsection (f) requires that both engineered and natural barriers be used to isolate waste at WIPP to the extent required by the applicable regulations of EPA.

Section 7 contains restrictions and limitations for the experimental program at WIPP and for the operational period of WIPP.

Subsection (a)(1) contains limitations on the surface dose rate and the curie content of transuranic waste received at WIPP and contains an overall limitation on the capacity of WIPP.

Subsection (a)(2) contains limitations on the volume of transuranic waste that can be received at WIPP during the experimental program and prior to the Administrator's certification of compliance with the disposal regulations. During this period, the amount of transuranic waste to be received at WIPP is limited by subparagraph (B) to only as much waste as is necessary for experiments, and in no case more than 0.5 percent by volume of the design capacity of WIPP. Subparagraph (C) sets forth a process by which the volume of waste may be increased, up to a maximum of 1 percent by volume, if the Administrator determines that such an increase is justified.

The limitation contained in subparagraph (B) is consistent with DOE's current plans for the experimental program, which envisions the use of an amount of transuranic waste of approximately 0.5 percent of the design capacity of WIPP. According to DOE's current plans, a total of 4,525 55-gallon drums of transuranic waste would be used during the experimental program.

The Committee is concerned, however, that a limitation of 0.5 percent codified in statute would be overly restrictive and would not allow the Secretary sufficient flexibility to modify the experimental program if necessary to generate additional scientific data at WIPP. While the Secretary has no current plans to use additional volumes of transuranic waste during the experimental program beyond the 0.5 percent limitation, the Committee believes that it is prudent to consider the possibility that additional volumes of waste may be needed at some future point during the experimental program.

Therefore, in order to provide flexibility for the experimental program, subparagraph (C) contains an absolute limitation on

volume of 1 percent of the design capacity of WIPP. This limitation is consistent with that established by EPA in its Final Conditional No-Migration Determination for WIPP published on November 14, 1990 and is consistent with testimony received by the Committee.

Under the provisions of this Act, any proposal to modify the experimental program to increase the volume of transuranic waste emplaced at WIPP would be subject to the review process in subsections (b) and (c) of section 5 and would be subject to the approval of the EPA Administrator.

Subsection (b) prohibits receipt of any high-level radioactive waste at WIPP. This section would revoke the authority of the Secretary to conduct experiments with high-level radioactive waste under Section 213 of Public Law 96–164. Section 213 of Public Law 96–164, and the accompanying conference report (Report 96–702), set forth the mission of WIPP to include temporary storage and experiments on defense high-level radioactive waste. DOE's program plans for WIPP initially included experiments on a limited quantity of defense high-level radioactive waste. DOE has since determined, however, that it will not conduct high-level radioactive waste experiments at WIPP.

Section 8 contains a requirement that transuranic waste emplaced at WIPP during the experimental program be retrievable, directs the Secretary to prepare a retrieval plan and sets forth the policy for storage of waste retrieved from WIPP.

Subsection (a) requires that waste emplaced at WIPP during the experimental program be retrievable, requires the Secretary to make an annual determination of retrievability, and requires the Secretary to conduct an annual demonstration that a sample waste container is retrievable. Paragraph (1) of this subsection contains three circumstances in which retrieval of waste might be necessary: if the WIPP facility fails to comply with the disposal regulations; if waste needs to be retrieved for engineering modification or for repackaging for permanent disposal; or if retrieval is necessary to protect the public health and safety and the environment.

Subsection (b) requires the Secretary to prepare a retrieval plan containing contingency plans for retrieval should it become necessary. The plan is to be submitted to the Administrator and the State and would be implemented by the Secretary in the event of a determination that waste would not remain retrievable. Under the provisions of this subsection, and transuranic waste that had to be retrieved from WIPP would be transported to a storage facility outside of the State, except in two circumstances: If only temporary storage is required; or, if the WIPP site has been designated as an interim storage facility and has been permitted by the State or EPA for that purpose. The Secretary would be authorized under this section to ship transuranic waste to any storage facility that is permitted for storage of transuranic waste under the Solid Waste Disposal Act, or other applicable hazardous waste law.

Subsection (c)(1) specifies the conditions under which transuranic waste retrieved from WIPP may be temporarily stored above ground at the WIPP site. The committee expects that any temporary above ground storage of waste at WIPP will be only for purposes of routine maintenance or similar activities associated with the experimental program. Paragraph (2) of subsection (c) specifies

the conditions under which transuranic waste retrieved from WIPP may be stored at any interim storage facility designated at the WIPP site. This paragraph is not intended to provide any separate authority for an interim storage facility at the WIPP site but rather is a recognition of the State's authority to issue a separate permit specifically for interim storage located at the WIPP site.

Subsection (d) specifies the circumstances under which the State may invoke the conflict resolution provisions of the Agreement for Consultation and Cooperation, as described in section 5(d), with respect to the requirements for retrievability under this section.

Subsection (e)(1) is intended to preserve existing authority of EPA and the State under the Soil Waste Disposal Act, or other applicable hazardous waste law, with respect to WIPP. This subsection does not confer to the State any authority over the Final Conditional No-Migration Determination for the Department of Energy Waste Isolation Pilot Plant published by EPA on November 14, 1990 (55 FR 47700).

Section 9 contains restrictions on transportation of transuranic waste to or from WIPP and provides for training of public safety officials and emergency responders.

Subsection (a) is self-explanatory.

Subsection (b) is self-explantory.

Subsection (c) provides for a transportation safety program, technical assistance and funds to ensure training for accident prevention and emergency preparedness for public officials, emergency response personnel and medical personnel in any State or Indian Tribe through whose territory transuranic waste destined for WIPP will be shipped. In addition to providing specific direction to the Secretary on the nature and extent of emergency response training, this subsection requires review of the training provided for public safety officials and other emergency responders by the Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health.

Subsection (d) is self-explanatory.

Subsection (e) prohibits any shipments of transuranic waste from the Los Alamos National Laboratory until funds sufficient to construct a by-pass around the city of Santa Fe have been made available to the State, the by-pass has been completed, or the EPA has certified that WIPP complies with EPA's disposal regulations. The Committee understands that the State intends to complete the Santa Fe bypass before the end of the experimental program at WIPP.

Subsection (f) establishes a State advisory group to report to the State and the Secretary on the adequacy of the emergency response medical training. The advisory group is charged with reviewing the DOE training programs for emergency response medial personnel and reporting to the Secretary any inadequacies in the program. The Secretary is directed to take immediate action to correct any deficiencies in the training and to suspend transportation of transuranic waste if necessary.

Subsection (g) states that the State may invoke the conflict resolution provisions of the Agreement for Consultation and Cooperation, as described in section 5(d), if the State disagrees with the

Secretary's determination of the adequacy of training under subsection (f)(3).

Section 10 addresses oversight of WIPP by the Mine Safety and Health Administration of the Department of Labor and the Bureau of Mines of the Department of the Interior.

Section 11 provides for economic assistance to the State in the form of annual payments, business and employment opportunities, and payments equivalent to taxes.

Subsection (a)(1) requires the Secretary to make payments of $20 million annually to the State beginning in the year in which transuranic waste shipments to WIPP are initiated and continuing through the year in which decommissioning is initiated. During decommissioning, the State would receive $13 million annually until WIP is fully decommissioned. All of these payments would be made subject to the availability of appropriations.

Subsection (a)(2) authorizes the Secretary to provide to the State and local governments payments equivalent to taxes and specifies the mechanism for determining the amount of payments.

Subsection (b) is self-explanatory.

Subsection (c) is self-explanatory.

Section 12 establishes an impact assessment group to prepare annual reports on the economic impact of activities at WIPP.

Section 13 requires the Secretary to prepare a plan for environmental control of WIPP after decommissioning and a plan for management and use of the WIPP site after decommissioning. A preliminary plan for active and passive environmental control of WIPP must be completed within three years after the date of enactment, and a preliminary plan for management of the land must be completed within two years after the date of enactment.

Section 14 authorizes appropriations necessary to provide compensation for the cancellation of Federal Oil and Gas Leases No. NMNM 02953 and 02953C, if such cancellation should become necessary.

Section 15 authorizes appropriations to carry out the purposes of this Act.

Section 16 states that the bill does not affect the existing Agreement for Consultation and Cooperation between the Department of Energy and the State of New Mexico except as explicitly stated. The provisions of the bill are not intended to take away any of the Governor's authority under the agreement.

Section 17 states that any transuranic waste emplaced at WIPP prior to the enactment of this Act shall be subject to the requirements of this Act regarding the limitations on volume and waste type, shall be retrievable, and shall be for purposes of the experimental program. If such waste fails to meet these requirements, the waste must be removed. The purpose of this section is to require removal of transuranic waste from WIPP only in the event that the requirements of this Act are violated. It is not intended to require the removal of transuranic waste, which has been emplaced in WIPP under the authority of an administrative land withdrawal, during any period in which the Secretary is acting under the authority of section 5(f).

The Committee believes it is possible that the experimental program will be initiated and transuranic waste will be received at

WIPP prior to the enactment of this Act under the authority of an administrative land withdrawal. the Committee believes, therefore, that it would be undesirable to require the removal of such waste in the absence of any threat to the public health and safety and in the absence of any violation of the requirements of this Act.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 23, 1991.

Hon. J. Bennett Johnston, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 1671, the Waste Isolation Pilot Plant Land Withdrawal Act of 1991, as ordered reported by the Senate Committee on Energy and Natural Resources on October 16, 1991.

Enactment of S. 1671 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1671.
2. Bill title: Waste Isolation Pilot Plant Land Withdrawal Act of 1991.
3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources on October 16, 1991.
4. Bill purpose: S. 1671 would reserve and surrounding the Department of Energy's (DOE's) waste isolation pilot plant (WIPP in New Mexico for use by the Secretary of Energy to conduct an experimental program at the WIPP facility, and to operate and decommission the facility as authorized. The bill authorizes DOE to conduct a planned experimental program at WIPP to determine the suitability of the site for storing transuranic waste material. The bill limits the amount of waste that may be transported to WIPP during the experimental program to one percent of the facility's capacity. S. 1671 directs the Environmental Protection Agency (EPA) to issue final standards for the disposal of transuranic radioactive waste within 2 years of the bill's enactment, and requires EPA to certify, within 6 years of the bill's enactment, that WIPP complies with disposal regulations.

The bill authorizes payment $20 million annually to New Mexico, starting with the year that waste shipments to WIPP are initiated until the decommissioning of the facility begins. The bill

authorizes annual payments of $13 million to the state during the decommissioning period. It all authorizes $1 million in 1992 and $0.75 million in subsequent years for payment to New Mexico for an economic impact assessment group to study the affect WIPP has on the state's economy.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995	1996
Specified authorizations	21	21	21	21	21
Estimated authorizations	18	24	40	51	30
Total authorizations	39	45	60	72	51
Estimated outlays	39	44	58	70	54

The costs of this bill fall primarily within budget function 050.

The cost of this bill after 1996 depends on whether or nor WIPP is determined to be an acceptable site for a permanent waste repository. If the site is determined to be suitable, the $20 million annual payment to New Mexico and other compensation authorized by this bill would continue over the facility's operational lifetime, estimated to be 20 years. If the site is rejected, the $13 million annual payment to New Mexico and other compensation authorized by this bill would continue over the estimated three-year decommissioning period.

It is possible that some of the costs shown in the above table would be incurred even if S. 1671 were not enacted. CBO's estimate of the cost of this bill would be reduced by about $100 million over the next five years if DOE is permitted to proceed with its current plans to begin an experimental program at WIPP without enactment of this bill.

Basis of estimate: The estimate assumes that this legislation will be enacted early in fiscal year 1992, that amounts authorized will be appropriated prior to the beginning of each fiscal year, and that spending will occur at historical rates for similar activities. We assume waste shipments to WIPP would begin in 1992.

Section 5 authorizes DOE to conduct experimental activities at WIPP with waste containing transuranic elements. Based on information from DOE, CBO estimates that the cost of shipping waste to WIPP and conducting planned testing activities will be about $5 million in 1992 and about $100 million over the planned 5-year test phase.

It is possible that DOE may proceed with the experimental program at WIPP without additional authorizing legislation. On October 9, 1991, the Department of the Interior notified DOE that it could proceed to emplace nuclear waste at WIPP under the modified administrative land withdrawal issued January 28, 1991. The State of New Mexico filed suit on October 9 seeking an injunction against this administrative land withdrawal. This case has not yet been heard. If DOE cannot begin its experimental program with nuclear waste at WIPP, the department could implement plans for a long-term delay at the site. These plans would involve maintaining the WIPP facility for use at a later date, while continuing non-

radioactive testing at the site, and would result in a substantial reduction in the WIPP budget.

Section 9 directs DOE to provide technical assistance and grants for training of public safety officials, acquisition of safety equipment, and other transportation safety programs in jurisdictions where waste will be transported to or from WIPP. Based on information from DOE we estimate these activities would cost $1.5 million annually.

Section 11 authorizes payments of $20 million annually to New Mexico, starting with the year that waste shipments to WIPP are initiated and ending when the decommissioning of the facility begins. The bill authorizes annual payments of $13 million to the state during the decommissioning period. This section also authorizes DOE to make payments to New Mexico and local government units equivalent to taxes on WIPP operations. DOE estimates such payments would amount to $5.5 million annually. The bill also authorizes funds for building, establishing, and operating the Carlsbad Environmental Monitoring Research Center Program. Based on information from DOE, we estimate that costs for this program would total $26 million for the first 5 years of operations.

Section 12 authorizes $1 million in 1992 and $0.75 million in subsequent years for payment to New Mexico for an economic impact assessment group to study the effect WIPP has on the state's economy.

6. Pay-as-you-go considerations: The Budget Enforcement Act of 1990 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. CBO estimates that enactment of S. 1671 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: On July 12, 1991, CBO provided a cost estimate for H.R. 2637, the Waste Isolation Pilot Plant Withdrawal Act, as ordered reported by the House Committee on Interior and Insular Affairs on June 26, 1991. Although not identical, these bills are similar. Enactment of either bill would authorize DOE to proceed with an experimental program at WIPP, and would authorize payments to New Mexico. The major differences are that H.R. 2637 would authorize $20 million payments to New Mexico through 1995, while S. 1671 would authorize these payments until decommissioning; H.R. 2637 would require DOE to wait to start its experimental program at WIPP until EPA has issued final disposal standards for transuranic radioactive waste, while S. 1671 would not require this delay.

10. Estimate prepared by: Kim Cawley.

11. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact that would be incurred in carrying out S. 1671.

This bill is not a regulatory measure in the sense of imposing federally-established standards or significant economic responsibilities on private individuals or businesses. The bill withdraws the public land surrounding the Waste Isolation Pilot Plant (WIPP) in New Mexico, transfers management of this land to the Department of Energy, authorizes the Secretary of Energy to carry out an experimental program at WIPP, and imposes additional limitations and conditions on the operation of WIPP.

Under existing law, the Secretary has broad authority to conduct research and development activities at WIPP. This bill would limit that authority and would provide a significant new regulatory role for the Environmental Protection Agency with respect to operation of WIPP.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little if any additional paperwork would result from the enactment of S. 1617.

Executive Communications

The pertinent reports and communications received by the Committee from the Department of Energy, the Department of the Interior, and the Environmental Protection Agency setting forth executive agency recommendation relating to S. 1671 are set forth below:

The Secretary of Energy,
Washington, DC, October 15, 1991.

Hon. J. Bennett Johnston,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: As you know, I recently announced my intention to proceed with a multiyear, experimental program at the Waste Isolation Pilot Plant (WIPP) under an administrative land withdrawal. Although the Department of Energy (DOE) was able to come to agreement with members of the New Mexico Congressional delegation and with Senate Energy Committee leadership on many of the terms for an appropriate land withdrawal, there remained only one point that simply could not be reconciled. This is the requirement that would limit the total volume of waste which could be emplaced in WIPP during the Test Phase to 0.5 percent of its total capacity.

Since the Committee will be conducting a markup session shortly to consider S. 1671, "The WIPP Land Withdrawal Act of 1991," I would like to take this opportunity to reemphasize the Department's position regarding the issue of waste volume limitation during the Test Phase.

First, if this 0.5 percent limitation is imposed on the Department, it is unrealistic for DOE to subscribe to a process that would require us to seek special authority from Congress on a periodic basis to add more waste to WIPP simply for the purpose of generating data required to predict long-term performance. Conceivably, there might even be a situation where the State of New Mexico would request further experimentation, and DOE would have to seek leg-

islation in order to accommodate the State's wishes. Second, while the Department has no current plans to use more waste than 0.5 percent, I have been urged by members of the Blue Ribbon Panel on WIPP and by the National Academy of Sciences panel to remain flexible on the test plan for WIPP. The Environmental Protection Agency (EPA) has also recommended this and set an upper limit of 1 percent of total capacity for the Test Phase in their No Migration Determination. Accordingly, in the event that experimental program modifications result in the use of more than 0.5 percent of the total waste volume planned for WIPP, I have requested that land withdrawal legislation provide for concurrence by the EPA Administrator before any experimentation begins. In no event will more than 1 percent of the total waste volume be placed in WIPP during the Test Phase. I am convinced that reliance on the technical judgment of EPA for this issue is the most sound way to proceed.

Let me assure you that DOE is not trying to maximize the amount of waste that is emplaced in WIPP. My argument is based solely on the need for sufficient flexibility to generate the scientific data that will allow DOE to demonstrate to the satisfaction of EPA that the waste will not migrate from WIPP over 10,000 years.

Recently, Senator Domenici offered a compromise on the waste volume limitation for the Test Phase. After careful review, I have concluded that I can support the basic elements of Senator Domenici's proposal on waste volume limitations. This compromise allows for the 0.5 percent limit to be increased up to 1 percent if necessary, provided certain conditions are met.

I want to continue to work with Congress toward enactment of a land withdrawal bill that is acceptable to the Administration. Such a bill would permanently address the situation and assure appropriate economic impact assistance to the State of New Mexico, which cannot be done under administrative procedures. As I have repeatedly stressed, I need the scientific flexibility to emplace sufficient quantities of transuranic waste that the experts tell me are required to show that the stringent EPA standards can be met. I hope that we can still work closely in parallel with the initiation of the Test Phase to accomplish this objective.

Sincerely,

JAMES D. WATKINS,
Admiral, U.S. Navy (Ret.).

THE SECRETARY OF ENERGY,
Washington, DC, October 4, 1991.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you know, yesterday, I announced my intention to proceed with the Test Phase at the Waste Isolation Pilot Plant (WIPP) under an administrative land withdrawal. Although we were able to come to agreement with members of the New Mexico Congressional delegation and with Senate Energy Committee leadership on many of the terms for an appropriate leg-

islative land withdrawal, there remained only one point that simply could not be reconciled. I still remain hopeful that we will be able to resolve this difference.

I am writing to assure you that even in the absence of legislation to permanently withdraw Federal lands on which the WIPP is located from the public domain, I have directed the Department of Energy (DOE) to observe fully the major, new regulatory and other safeguards contained in S. 1671, as jointly proposed to be modified during recent negotiations between the Department and others involved in that process. They are:

Modifications to the currently planned experimental program involving transuranic waste at the WIPP will be subject to review and comment by the State of New Mexico, the Environmental Evaluation Group (EEG), the National Academy of Sciences, and the Environmental Protection Agency;

Modifications to the experimental program will be subject to Conflict Resolution under the Agreement for Consultation and Cooperation if the State of New Mexico disagrees;

In the event that experimental program modifications result in the use of more waste than 0.5 percent of the total volume planned for WIPP, concurrence by the EPA will be sought before any experimentation will begin;

In no event will more than 1.0 percent of the waste be placed in WIPP during the Test Phase;

No radioactive waste will be used for operational demonstrations during the Test Phase;

No remote-handled waste will be emplaced in WIPP during the Test Phase;

No spent fuel or high-level waste will be emplaced in WIPP;

The Department will abide by the radiation limits on emplaced waste that are specified in the proposed legislation;

No shipments of waste from Los Alamos National Laboratory to WIPP will take place until the end of the Test Phase or when the Santa Fe bypass has been funded or built;

The Department will provide test data in a timely manner to the State and the EEG;

The Department will consult with the State of New Mexico on the adequacy of the medical training program for WIPP;

The Department will report to the Congress on the transportation emergency response training provided through FY 1991;

The Department will submit a retrieval plan to the State and the EEG;

The Department will provide performance assessment reports to the EPA, State of New Mexico, and the EEG; and

The Mine Safety and Health Administration (MSHA), an independent regulatory agency of the Department of Labor, will conduct mine safety inspections as frequently, and in the same manner, as it evaluates other mine sites under the Federal Mine Safety and Health Act of 1977.

It is the Department's intention to take whatever actions are required to preserve the scientific integrity of the experimental program. Accepting these key scientific and safety provisions from the inception of the Test Phase as if they were law will help the DOE (and the EPA) evaluate long-term performance.

I also intend to request from the Congress the authority and funding to continue payments to the State that help offset any financial burdens due to the operation of this first-of-as-kind research facility. I plan to accomplish this by requesting funds for this purpose annually in future budget requests. This action is consistent with provisions contained in the various land withdrawal bills still before the Congress.

I will continue to work closely with Congress toward enactment of a land withdrawal bill that is acceptable to the Administration. Such a bill would permanently address the situation and assure appropriate assistance to the State of New Mexico, which cannot be done under administrative procedures. As I have repeatedly stressed, I need the scientific flexibility to emplace sufficient quantities of transuranic waste that the experts tell me are required to show that EPA standards can be met. I hope that we can still work closely in parallel with the initiation of the Test Phase to accomplish this objective.

Sincerely,

JAMES D. WATKINS,
Admiral, U.S. Navy (Ret.).

STATEMENT OF LEO P. DUFFY, DIRECTOR OF ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT, U.S. DEPARTMENT OF ENERGY

I am pleased to appear before the Committee today to discuss the status of the Waste Isolation Pilot Plant (WIPP) test program, its readiness to begin test operations, and S. 1671, the "Waste Isolation Pilot Plant Land Withdrawal Act of 1991," introduced recently by Senators Domenici and Bingaman.

Pending an appropriate land withdrawal, WIPP is ready to begin the Test Phase with transuranic (TRU) waste. The Department will have completed by the end of this month all prerequisites, other than land withdrawal, that are required to conduct the dry Bin-Scale Test Phase activities at WIPP in a manner that fully protects the safety of workers, the public, and the environment.

The completion of these prerequisites marks a significant accomplishment—resulting from years of DOE and external, independent technical analyses and environmental and safety evaluations, as well as extensive public review. We are proud of the results of this colossal effort and of the wide array of actions that indicate our readiness to proceed with this first-of-a-kind test program. Specifically, the Department has completed the following:

Final Safety Analysis Report (FSAR) and FSAR Addendum for the dry bin portion of the Test Phase;

Final Supplement Environmental Impact Statement (SEIS);

Record of Decision on the SEIS;

Performance Assessment Test Plan;

Retrievability Plan;

Transportation emergency response training for the States along selected transportation routes to WIPP;

TRansUranic PACkaged Transporter (TRUPACT-II) fabrication, acceptance and certification;

Demonstration of the Department's response to a simulated transportation accident;

Resource Conservation and Recovery Act (RCRA) permit applications;

Quality Assurance Plans;

Waste Characterization Plans; and

Other key operational readiness activities, including a final Operational Readiness Review (ORR) conducted by the Department's Office of Environmental Restoration and Waste Management.

WIPP's readiness to begin a multi-year Test Phase, with TRU waste, to determine compliance with environmental standards will allow the Department to answer the fundamental question: "Is WIPP a suitable facility for the safe permanent disposal of transuranic waste?" The Test Phase will yield data to support performance assessment calculations needed to determine compliance with the Environmental Protection Agency's (EPA) long-term disposal standards for TRU waste. It also will yield data needed to support the EPA No Migration Determination made pursuant to the provisions of the Resource Conservation and Recovery Act (RCRA). These tests and data are designed to assess WIPP's long-term performance.

Like any other research endeavor, the Test Phase necessarily will be an evolving process that would be conducted through interactive cycles between testing and performance assessment. Performance assessment will provide the basis for identifying additional tests and data that may be needed to support a compliance determination.

The kind of tests that are important for compliance determination, and that will be conducted during the Test Phase, would include some experiments that use radioactive waste materials include large-scale seal tests, rock mechanics tests, brine inflow and radionuclide migration tests, and several hydrologic tests that are being performed at the WIPP. Tests that use radioactive waste materials include laboratory, dry bin, wet bin, and solubility tests. Laboratory tests would proceed in parallel. These studies will yield solubility and limited scoping data on gas generation rates to help guide the balance of the test program and would be used in completing the WIPP performance assessment. Dry bin tests would confirm, on a larger scale, laboratory test results and would determine the consistency of test results within a waste type of order to finalize the scope of wet bin tests. Conduct of wet bin tests will be based on early results of the dry bin tests to obtain an understanding of the rate of gas generation with brine in the repository. These tests also will help establish the extent to which alcove tests will be needed for improved confidence in gas generation and volatile organic compound (VOC) source term data. Solubility and leachability tests will be conducted in parallel with these tests, beginning in 1992, to identify solubility and leaching rates of as-received and as-modified wastes. These tests will determine how processes distribute radionuclides between brines and solids. The Department is developing these tests to ensure the integration and continuity of laboratory and field tests, as well as a data confirmation. As with the dry bin portion of the Test Phase, prior to initiating these later portions of the Test Phase, the Department of Energy (DOE) will

perform readiness evaluations to ensure worker and public health and safety, and environmental protection.

The document that serves as the Department's programmatic guide for meeting EPA disposal standards in 40 CFR Subpart B is the "DOE WIPP Test Phase Plan: Performance Assistance." The Test Phase Plan outlines the activities that will be conducted during the Test Phase which are deemed necessary to reduce the uncertainty for a successful demonstration of compliance with EPA disposal standards. The Plan, considered a living document, will describe in an FY 1992 update its interrelationships with DOE's Test Phase Strategy and the Test Phase Management Plan, identify all the activities in an expanded Integrated Work Breakdown Structure for the project, and provide multi-path logic for accomplishment of Test Phase activities.

DOE's Test Phase Plan has undergone an extensive review and comment process during the last two years. The Test Phase Plan was first published as a draft in April 1989. Review comments were received from the National Academy of Sciences/National Academy of Engineering WIPP Review Panel, the independent New Mexico Environmental Evaluation Group, the State of New Mexico, the EPA, and members of the WIPP Blue Ribbon Panel. Following incorporation of comments received from external independent reviewers and from an internal DOE review, a Draft Final Plan was published in December 1989. Independent external oversight organizations again reviewed the Plan and submitted comments. These comments were reviewed, reconciled with reviewers, and incorporated in the "WIPP Test Phase Plan: Performance Assessment (Rev. O)," published in April 1990. Review of this document, along with reviews of the Final Safety Analysis Report and Addendum, Retrieval Plan, and FSEIS by these groups and others, has addressed the scope, usefulness, relevance, safety and environmental risks, and timeliness of the Test Phase activities. The National Academy of Sciences Panel on the WIPP, the Environmental Protection Agency (EPA), and the Secretary's independent Advisory Committee on Nuclear Facility Safety have supported the safety and scope of the WIPP testing activities.

Regarding transportation readiness, all 15 TRUPACT-II shipping containers have been accepted from the fabricator by the DOE management and operations contractor, Westinghouse. The TRUPACT-II design has been certified by the Nuclear Regulatory Commission. All other factors necessary to begin transportation are in place: tractors, trailers, trained drivers, maintenance personnel and fleet management.

The Department also has reached cooperative transportation agreements with the States and Tribal Nations along the shipping routes from DOE facilities to the WIPP that will be used during the Test Phase. DOE is funding these agreements in a cooperative effort to address transportation issues such as accident prevention, emergency response and preparedness, and public information.

In response to the request of many States along the WIPP shipping corridor, a test of DOE and local emergency response capabilities was conducted last November, when the State of Colorado hosted an emergency response exercise which stimulated a transportation incident near Colorado Springs involving a TRU waste

shipment. Just last Saturday, the DOE supported a successful emergency response drill conducted by the State of New Mexico which simulated a full-scale disaster involving a TRUPACT-II tractor trailer. The success of both exercises and the long-standing cooperative agreements with the States and Tribal Nations clearly establish the framework for conducting additional tests of emergency response capabilities in the future to deal with these types of events.

The DOE has developed a transportation emergency exercise program, designed to improve State readiness and to provide the public with increased familiarity and information about the TRUPACT-II shipping container. As a result of these exercise programs, training courses, and safety programs developed with resources provided by the DOE to the affected States, the five western States through which the first waste shipments will travel now have the resources to inspect and track shipments and respond to an emergency. Approximately 5,200 emergency response personnel have been trained along the Idaho-to-New Mexico route, and a total of 7,000 people have been trained nationwide.

I recognize the concerns some have expressed with regard to medical and hospital preparedness in responding to WIPP related accidents—particularly the availability of chelating agents. Although we believe the state of preparedness is adequate to initiate shipments, I can assure you DOE, along with the State of New Mexico, is taking steps to increase the number of physicians and medical treatment centers possessing these chelating agents.

Three training courses have been and will be offered by DOE to safety personnel in the States through which waste shipments will be transported to WIPP. One course is designed for the State and local safety, health, environmental, and radiological professionals who would be evaluating and assessing the environmental and human effects in the unlikely event of a TRU-related transportation accident resulting in radioactive releases. A second course is intended for the individual(s) who would be in overall command or control at the scene of an accident. The third course emphasizes training for the first-arriving emergency units not working under a formal incident command system, and without health physics professionals to guide them. These units need a basic knowledge of waste transportation shipments, radiological hazards, and the potential effects of an incident so as to effectively perform initial emergency response tasks. An important goal of these courses is to provide personnel with the skills and knowledge to train other emergency personnel in their communities after the DOE training programs have been completed.

Clearly, from a technical and facility readiness viewpoint, WIPP will be ready shortly to ship waste for the Test Phase. However, an appropriate land withdrawal is still required before the Test Phase may begin. Permanent land withdrawal through legislation remains one of the Department's key legislative priorities. Recently, Senators Domenici and Bingaman introduced S. 1671, a bill on WIPP land withdrawal that represents a significant departure from S. 1007, the Administration's WIPP land withdrawal proposal. The Administration bill was premised, in part, on the long-standing working relationship between the Department and the State of

New Mexico. Rather than being overly prescriptive, the Administration bill built on the existing Consultation and Cooperation Agreement with the State, the existing role of EEG, and the role of the New Mexico Environment Department as the regulator of mixed waste coming to WIPP, as well as the role of the Labor Department's Mine Safety and Health Administration (MSHA) in mine safety inspections to assure WIPP underground safety, and the role of EPA as the regulator from a No-Migration Variance standpoint. We agree with the proposed role of EPA as certifier of the Department's demonstration of compliance with the EPA disposal standards. Finally, we are in agreement with the concept of financial assistance to New Mexico to mitigate WIPP-related impacts from the Test Phase with waste; this concept was embodied in the Administration's bill, as well as the proposed modification to the Consultation and Cooperation Agreement with the State of New Mexico, which we aggressively pursued earlier this year. Given this, we view the Senate bill as being too prescriptive in nature; certain provisions in S. 1671 would so seriously affect the WIPP Test Phase and performance assessment program that we cannot support the bill as introduced.

Let me now address these provisions and our specific concerns. First, S. 1671 would limit in an unnecessary manner the amount of waste that could be emplaced during the Test Phase. This would severely hamper the flexibility of the test program. The volume of Test Phase waste that could be shipped to WIPP under S. 1671 could be no more than one-half of one percent of the total capacity of WIPP. The one-half percent limit would only allow for the collection of data DOE now knows it needs for the determination of compliance with the EPA disposal standards. We are in no position today to say that ultimately we will need more than the one-half percent limit. We can say, however, that experience indicates that a first-of-a-kind test program needs flexibility. This is exactly why EPA, in issuing the No Migration Determination, provided a limit of one percent. Legislating such a low limit before we can even begin the Test Phase ensures that another law will be required to conduct experiments, using more than one-half percent, that may prove necessary to demonstrate compliance with EPA standards. The amount of time all of us have spent in attempting to pass a first land withdrawal bill does not bode well of rapid passage of a second bill. Delays in the Test Phase obviously will come at a high cost.

The second area of concern deals with the provision that would require MSHA to inspect the mine at WIPP in accordance with the requirements of the Federal Mine Safety and Health Act (FMSHA). A Memorandum of Understanding (MOU) has been in effect between the DOE and MSHA since 1987 concerning periodic health, safety, and compliance inspections of WIPP mining operations to assess conformance with MSHA standards. The WIPP underground facilities have been inspected six times by MSHA since 1989. An augmented regulatory role for MSHA beyond that already agreed to between DOE and MSHA is neither necessary nor appropriate, since the MSHA role to date has assured safe underground working conditions. If language is included in the bill at all, it should

require MSHA to inspect the mine at WIPP as frequently, and in the same manner, as agreed to under the MOU.

The third major area of concern deals with the requirement for a DOE Retrieval Plan to include the return of waste to its point of origin, or to any other interim storage facility other than WIPP. The specific operating plans for storage of retrieved waste can be best formulated only after the reasons for waste retrieval are known (e.g., for waste treatment or processing; for permanent disposal elsewhere in the event WIPP is found not to be in compliance with the provisions of 40 CFR 191 Subpart B; or if the waste is retrieved to allow for underground facility corrective action(s), to ensure the continuation of the experimental program, in which case the waste can be temporarily stored at WIPP). For these reasons, the Department's position is that WIPP should not be excluded from consideration as one of DOE's candidate interim storage sites for waste retrieved from WIPP.

S. 1671 also would require that any waste emplaced at WIPP prior to the date of enactment be subject to its provisions and removed if in "non-compliance." The effect of this section could be that any waste emplaced under the authority of an administrative land withdrawal would have to be removed. The Department strongly objects to this provision as it would result in unneeded waste retrieval simply because the Department proceeds with administrative land withdrawal, without any showing that the emplaced waste was endangering public health and safety or the environment. Of course, the DOE has no objection to requiring the removal of waste emplaced in the WIPP facility in the event that the Secretary, after consultation with the EPA Administrator and the State, determines that such action is necessary to protect public health and safety or the environment.

To summarize, the prerequisites for the dry bin portion of the Test Phase will be completed by the end of the month, other than land withdrawal. WIPP and the supporting sites and system will be ready to begin the dry bin portion of the Test Phase with TRU waste to determine WIPP's suitability as a TRU waste disposal facility. Prior to initiating later portions of the Test Phase (e.g., wet bins, solubility, alcoves), the DOE will perform fully documented readiness evaluations to ensure worker and public health and safety and environmental protection. These evaluations will have the benefit of external, independent review.

The enactment of legislation this Session to permanently withdraw the land on which the WIPP facility is located from the public domain is most important to the Department to ensure that this critical research and development program moves forward. Such action by the Congress is particularly reasonable at this time, given the state of readiness of a facility with over a decade of Federal funds invested in it. If a legislative land withdrawal is not enacted in the very near future, however, the DOE may have no alternative but to proceed under an appropriate administrative land withdrawal issued by the Secretary of the Interior. Coupled with our proposed agreement with the State of New Mexico on financial assistance and the regulatory oversight mechanisms already in place, the public health and safety and the environment can be protected equally as well under the administrative land withdrawal

approach as under the legislative approach during the Test Phase. Although proceeding under an administrative land withdrawal is not the preferred approach, the DOE stands firm in its resolve to initiate the WIPP Test Phase with TRU waste and to determine whether WIPP can be the solution to the disposal of this Nation's transuranic waste.

STATEMENT OF FRANCIS CHERRY, JR., DISTRICT MANAGER, ROSWELL DISTRICT, NEW MEXICO, BUREAU OF LAND MANAGEMENT

I appreciate the opportunity to appear here today to discuss land withdrawal issues associated with the Waste Isolation Pilot Plant Project, known as "WIPP," in Eddy County, New Mexico. My remarks will focus on the Administration's views on the necessity for legislation to accomplish the permanent withdrawal and what should be included in that legislation.

The Department of the Interior has consistently advocated a permanent congressional withdrawal of the WIPP site before transuranic nuclear wastes are stored in the facility. The Bureau of Land Management (BLM) has been involved in the preliminary discussions and the WIPP proposal since 1973, when some initial site studies were authorized by a cooperative agreement. In 1976, the first withdrawal application was filed for 17,200 acres of public land for studies for a possible WIPP site. In 1980, an environmental impact statement was completed and a modified withdrawal application filed on 8,960 acres to protect the four square miles surrounding the proposed facility.

In March 1982, an 8-year administrative withdrawal embodied in Public Land Order (PLO) No. 6232 was granted on the 8,960 acres to allow for finalization of the Site Preliminary Design Validation. When this validation was completed in 1983, another 8-year administrative withdrawal was granted by PLO No. 6403 to permit full construction of the facility. This withdrawal action applied to the 8,960 acres of public land, and specifically stated that the order would not authorize use or occupancy for transportation, storage, or burial of any radioactive materials.

In May 1988, the BLM completed the acquisition of 1,280 acres of State land, so the entire 10,240 acres of the WIPP site is now Federal land managed by the BLM and subject to the withdrawal.

In January 1991, PLO No. 6826 was signed. It modified PLO No. 6403 to (1) expand the purpose of the withdrawal to include using retrievable radioactive waste at the site in conducting the test program, (2) increase the Department of Energy's (DOE) exclusive control from 640 to about 1,450 acres, (3) extend the term through June 29, 1997, and (4) delete paragraph 5 of the PLO (which prohibits the transportation, storage, or burial of radioactive materials) but only after DOE certifies that all permitting requirements have been met and the BLM issues a notice to proceed and publishes it in the Federal Register.

Under the Federal Land Policy and Management Act of 1976 (FLPMA), the Secretary of the Interior is authorized to make withdrawals exceeding 5,000 acres for a period of only 20 years, although FLPMA envisions extensions for periods up to 20 years. Thus, the withdrawal concept in the FLPMA envisions that the

lands withdrawn will, to a large extent, be somewhat suitable for return to their former status and public land uses at the conclusion of the withdrawal.

If WIPP can be shown to be in compliance with applicable regulations, it would have a projected operating period of 25 years, to be followed by decommissioning. Following decommissioning, active and passive controls must be implemented and maintained by the DOE to ensure that the Environmental Protection Agency (EPA) performance standards are met. Because the projected term of use of the reserved site will extend long beyond the 20-year period of use that the Secretary may authorize under the FLPMA, the most appropriate course of action would be to have the lands withdrawn and transferred permanently to the DOE by the Congress, rather than require extension of an administrative land withdrawal.

In summary, we believe that legislative action ultimately will best serve the needs of the DOE to better provide for carrying out the WIPP objectives. Such legislation should provide for permanent transfer of the WIPP site to the DOE, which should have complete management authority over the tract. In addition, such legislation should address grazing and valid existing rights such as rights-of-way.

This concludes my prepared statement.

I will be happy to answer questions.

Statement of the U.S. Environmental Protection Agency

This statement for the hearing record presents EPA's involvement in matters relating to the Waste Isolation Pilot Plant (WIPP) in southeastern New Mexico.

In 1979, Congress authorized the U.S. Department of Energy (DOE) to proceed with construction of the WIPP for the "express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes" resulting from U.S. defense activities (Public Law 96–164). My testimony today will focus on EPA's role in assuring the safety of the WIPP facility.

EPA's radioactive waste standards

In 1985, EPA promulgated Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes (40 CFR 191). These standards were developed pursuant to the Agency's authorities and responsibilities under the Atomic Energy Act of 1954, as amended; Reorganization Plan No. 3 of 1970; and the Nuclear Waste Policy Act of 1982. The standards consist of two Subparts: Subparts A and B. Subpart A limits the radiation exposure of individual members of the public during the management and storage of the subject wastes prior to their disposal. Subpart B establishes several different types of requirements pertaining to the disposal of wastes. The primary standards are long-term containment requirements that limit projected radionuclide releases to the accessible environment for 10,000 years. Collaterally, a set of qualitative assurance requirements provide increased confidence that the containment requirements will be met during this lengthy period. A set of individual protection requirements limits radiation exposures to individual

members of the public and a set of ground water protection requirements limits contamination of ground water.

In 1987, the U.S. Court of Appeals for the First Circuit vacated and remanded Subpart B to EPA for reconsideration. EPA is proceeding with its program to update and reissue those portions of the standards struck down by the Court. We are now planning to propose standards in 1992 and anticipate a final rule by 1993.

EPA'S HAZARDOUS WASTE REQUIREMENTS

One of the critical elements in opening the WIPP is compliance with EPA's Resource Conservation and Recovery Act (RCRA) requirements. A significant portion of the waste destined for the WIPP (up to 60%, according to DOE estimates) contains hazardous waste subject to RCRA program requirements.

The RCRA program, as a general rule, is implemented through authorized State programs. In July 1990, the Agency authorized the State of New Mexico to regulate as hazardous waste, mixed hazardous and radioactive wastes. As a result of this action, the mixed waste destined for the WIPP is a RCRA-regulated waste in that State.

As RCRA regulated hazardous waste, the mixed waste destined for the WIPP is subject to two important RCRA requirements: the RCRA land disposal restrictions and RCRA hazardous waste permit requirements.

The hazardous waste portion of the mixed waste disposed in the WIPP is subject to the land ban provisions in Section 3004(d)–(h) of RCRA as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). HSWA directed EPA to develop treatment standards that certain hazardous wastes must meet before they may be disposed of on land. Once the land disposal prohibition goes into effect, waste cannot be placed in a land disposal unit unless it has been treated to meet or otherwise meets specified standards or unless the Administrator determines that the treatment is not required in order to protect human health and the environment. This determination must be based on a demonstration by a facility owner/operator that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the disposal unit for as long as the waste remains hazardous.

In November 1990, in response to a petition from DOE, EPA determined that DOE's planned testing activities at the WIPP satisfied the statutory no-migration standard, assuming certain conditions were met. Under EPA's final decision, DOE may place mixed wastes in the WIPP repository without pretreatment under the following conditions: (1) wastes subject to RCRA land disposal restrictions may only be placed in the WIPP for testing to determine the long-term acceptability of the repository, (2) the volume of wastes cannot exceed 8,500 drums or 1 percent of the total repository capacity, (3) wastes must be placed in a "readily retrievable" manner and must be retrieved from the repository at the conclusion of the Test Phase if DOE cannot demonstrate that the repository meets standards for long-term disposal, (4) hazardous air emissions from the repository must be monitored and cannot exceed certain speci-

fied levels, and (5) wastes placed in the WIPP must meet certain specific analytical requirements.

EPA reached this determination through a full rulemaking process, with three public hearings in the State of New Mexico, and after careful review of hundreds of comments on a proposed decision issued in April 1990. Any modification of these conditions would require public notice and opportunity for comment. Furthermore, EPA's no-migration determination applies only to the WIPP Test Phase. Before permanent disposal of waste can occur, a second determination will be required. Any such determination will be made with full opportunity for public comment. In addition, mixed wastes shipped to the WIPP will also be subject to the general RCRA standards applying to hazardous waste. These requirements will be administered by the State of New Mexico, as part of its authorized hazardous waste program. In particular, the WIPP will be subject to RCRA permitting requirements. An application for a full RCRA permit is now under review by the State regulatory authority. EPA will work closely with the State, both in the enforcement of its no-migration determination and in the issuance of the RCRA permit.

WIPP TEST PHASE

The Department of Energy is preparing to begin a Test Phase at the WIPP as part of its efforts to demonstrate compliance with EPA's radioactive and hazardous waste requirements. Current DOE plans call for 0.5 percent by volume of the waste disposal capacity of the WIPP—or approximately 4500 drums—to be emplaced for experimental purposes. DOE has documented its ability, in the Final Safety Analysis Report (FSAR) and FSAR Addendum, to comply with Subpart A of Part 191. Actual demonstration of projected compliance with the long-term requirements of 40 CFR Part 191 Subpart B and 40 CFR Part 268 will await the results of test activities.

The Agency has reviewed DOE's draft plans for the Test Phase and generally supports the range of laboratory-scale, bin-scale and alcove-scale tests being proposed. The Agency believes that the proposed tests will provide data and information which will be useful in making determinations of compliance with EPA's radioactive and hazardous waste requirements.

EPA's support for the proposed tests is based on the premise that emplacement of waste for testing purposes does not represent a commitment to use the WIPP as a disposal facility. The Test Phase could yield results that would require improvements in the design of the facility, modifications to the waste form or even abandoning plans for disposal in the facility. Accordingly, EPA's no-migration determination requires that the waste remain readily retrievable during the Test Phase.

EPA'S AIR EMISSIONS STANDARDS

On December 15, 1989, EPA issued National Emission Standards for Hazardous Air Pollutants: Radionuclides (NESHAP) pursuant to the Agency's authorities and responsibilities under section 112 of the Clean Air Act. The NESHAP standards apply to a variety of

radionuclide source categories, including DOE facilities generally and the WIPP facility specifically during the Test Phase. (EPA's radioactive waste management standards, not the NESHAP, will apply if WIPP is designated as a disposal facility.)

The NESHAP specifies that air emissions of radionuclides from DOE facilities shall not exceed amounts that would cause any member of the public to receive a dose of greater than 10 millirems per year effective dose equivalent. The NESHAP also requires that DOE send annual reports of emissions to EPA. EPA will review these reports and will inspect the WIPP facility to confirm continued compliance with the standard.

COMMENTS ON PROPOSED WIPP LAND WITHDRAWAL LEGISLATION

With respect to S. 1671, the Waste Isolation Pilot Plant Land Withdrawal Act of 1991, EPA generally supports the provisions that affect our operations. In particular, we endorse the proposed role of EPA as certifier of the DOE's demonstration of compliance with the environmental standards for the disposal of spent fuel, high-level, and transuranic radioactive waste.

EPA is concerned that the schedule for promulgation of the disposal standards in Section 6(a) of the bill may result in unrealistic deadlines. We anticipate issuing the proposed standards in April of 1992 and the final standards in May of 1993. If S. 1671 is enacted by the Congress this fall with the current schedule, the deadline for issuance of the proposed standards is likely to fall in January or February. Likewise, the deadline for issuance of the final standards would be October or November of 1992. We do not believe we can comply with such a schedule. As a result, EPA recommends that Section 6(a) be amended to be consistent with the schedule under which we are currently operating.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1671, as ordered reported, are shown as follows.

While there are no actual changes in the text of existing law made by this bill, S. 1671, as ordered reported, would revoke specific authority established by Public Law 96-164. Section 7(b) of S. 1671 revokes the authority of the Secretary of Energy to conduct high-level radioactive waste experiments at the Waste Isolation Pilot Plant established pursuant to section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980.

The text of section 213 of Public Law 96-164 is printed below:

WASTE ISOLATION PILOT PLANT, DELAWARE BASIN, NEW MEXICO

SEC. 213. (a) The Secretary of Energy shall proceed with the Waste Isolation Pilot Plant construction project authorized to be carried out in the Delaware Basin of southeast New Mexico (project 77-13-f) in accordance with the authorization for such project as modified by this section. Nothwithstanding any other provision of law, the Waste Isolation Pilot Plant is authorized as a defense activity of the Department of Energy, administered by the Assistant

Secretary of Energy for Defense Programs, for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States exempted from regulation by the Nuclear Regulatory Commission.

(b)(1) In carrying out such project, the Secretary shall consult and cooperate with the appropriate officials of the State of New Mexico, with respect to the public health and safety concerns of such State in regard to such project and shall, consistent with the purposes of subsection (a), give consideration to such concerns and cooperate with such officials in resolving such concerns. The consultation and cooperation required by this paragraph shall be carried out as provided in paragraph (2).

(2) The Secretary shall seek to enter into a written agreement with the appropriate officials of the State of New Mexico, as provided by the laws of the State of New Mexico, not later than September 30, 1980, setting forth the procedures under which the consultation and cooperation required by paragraph (1) shall be carried out. Such procedures shall include as a minimum—

(A) the right of the State of New Mexico to comment on, and make recommendations with regard to, the public health and safety aspects of such project before the occurrence of certain key events identified in the agreement;

(B) procedures, including specific time frames, for the Secretary to receive, consider, resolve, and act upon comments and recommendations made by the State of New Mexico; and

(C) procedures for the Secretary and the appropriate officials of the State of New Mexico to periodically review, amend, or modify the agreement.

(3) As soon as practicable after the date on which the agreement referred to in paragraph (2) is entered into by the Secretary and the appropriate officials of the State of New Mexico, but not more than 15 days after such date, the Secretary shall transmit to the Committees on Armed Services of the Senate and the House of Representatives copies of such agreement, and a period of 45 days shall elapse while Congress is in session before such agreement becomes effective unless the Committees on Armed Services of the Senate and the House of Representatives, in writing, waive any portion of such 45-day period. The Secretary shall promptly notify such committees of any amendment or modification made to such agreement under paragraph (2)(C).

(c) No law enacted after the date of the enactment of this Act shall be held, considered, or construed as amending, superseding, or otherwise modifying any provision of this section unless such law does so by specifically and explicitly amending, repealing, or superseding this section.

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